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FHIP NO. FH100G95-00019

FINAL REPORT

June 30, 1997



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STATE OF MONTANA
HUMAN RIGHTS COMMISSION
FAIR HOUSING ENFORCEMENT PROJECT

January 1, 1996 - June 30, 1997

FINAL REPORT

Grant # FH 100G95-00019
HUD/FHIP Program
Administrative Enforcement Initiative Grant

Submitted July 1997
to

United States Department of Housing and Urban Development
Fair Housing Initiatives Program
Office of Fair Housing Initiatives and Voluntary Program
451 7th Street, S.W. Room 5234
Washington, D.C. 20410-20000

FORWARD

The Human Rights Commission Fair Housing Enforcement Project team included legal counsel, Tim Kelly, a human rights investigator, Denise Blankenship, and project assistant, Rich Semans. The team was supervised by the Administrator for the Human Rights Commission, Anne MacIntyre. The work of the project was the primary product of those persons, with help, assistance and guidance from the other staff and the Commissioners of the Montana Human Rights Commission. This final report was authored principally by the project legal counsel, Tim Kelly. The findings, conclusions and opinions contained in this report are the responsibility of the author and do not represent the official position of the United States Department of Housing and Urban Development, the Human Rights Commission of the State of Montana, or any other person or party unless ratified or adopted by formal action.

STATE OF MONTANA
Human Rights Commission
Fair Housing Enforcement Project - Final Report

TABLE OF CONTENTS	PAGE
INTRODUCTION	1
PART I. PROJECT RESEARCH ACTIVITIES	4
Summary	4
A. General Research -Topics and Sources	5
Table No. 1 “Location of Selected Market Areas in State of Montana”	6
B. General Research Results	7
1. Demographics	7
Table No. 2 “General Population and Housing Data (State and Select Housing Markets)”	8
2. Legal Standards	9
3. Discriminatory Patterns	10

C.	Independent Research on Fair Housing Attitudes in Montana . .	13
1.	MSU/UM Research Team	13
2.	Methodology	13
3.	Key Person Interviews - Findings	14
4.	Focus Group - Findings	15
5.	Statewide Survey - Findings	16
	Table No. 3 "Perceived Necessity of Human Rights Laws"	16
	Table No. 4 "Perceived Fairness of Human Rights Laws"	17
	Table No. 5 "Perceived Effectiveness of Human Rights Laws"	17
	Table No. 6 "Perceived Importance of Human Rights Commission"	18

**PART II. PROJECT INVESTIGATION AND ENFORCEMENT
ACTIVITIES 19**

Summary	19
-------------------	----

A. Distribution of Enforcement Cases	21
------------------------------------------------	----

1. Geographical Distribution	21
----------------------------------------	----

Table No. 7 "FHEP Fair Housing Enforcement Cases by Number of Cases and Housing Market"	21
----------------------------------------------------------------------------------------------------	----

2. Housing Impact Distribution	22
Table No. 8 “FHEP Fair Housing Enforcement Cases by Affected Units and Housing Market”	22
3. Types of Respondents	22
Table No. 9 “FHEP Cases by Type of Respondent or Defendant”	23
4. Distribution by Forum and Status	24
Table No. 10 “Distribution of Cases by Forum and Current Status”	24
B. Enforcement Strategies	24
1. Low Volume/Independent Providers	24
2. Publisher Cases	25
3. Professional Service Providers.....	25
Table No. 11 “Distribution of Fair Housing Public Service Articles as Term of Conciliation Agreement”	26
C. Major Cases	27
1. Glacier Village Greens	27
2. Lee Enterprises, Inc.	29
3. Century 21 Home and Investment Center, Inc. Larry Lee	31
4. Mobile City Home Park	32

5. Sail Maker Realty	33
6. Westana Mobile Manor	34
7. MSU-Bozeman/Family Housing	35
8. Pines Mobile Homes	36
9. Ron's Mobile Homes, Inc.	37
10. Alpha Arms	38

PART III. COMMUNITY OUTREACH AND EDUCATION 39

Summary	39
A. Coordination of Project Outreach and Education	40
B. Fair Housing Seminars	41
C. Public Service Articles	43
Table No. 11 “Distribution of Fair Housing Public Service Articles as Community Service”	44
D. Audio Public Service Announcements	45
E. Familial Status Poster	46
F. Fair Housing Informational Pamphlet	47

PART IV. CONCLUSIONS AND RECOMMENDATIONS 48

PART V. APPENDIX

MONTANA HUMAN RIGHTS COMMISSION FAIR HOUSING ENFORCEMENT PROJECT (1996-97)

INTRODUCTION

In November 1995, the United States Department of Housing and Urban Development (HUD) awarded a Fair Housing Initiatives Project (FHIP) grant to the State of Montana Human Rights Commission (HRC or Commission). The HUD grant enabled the Commission to conduct research, investigation, enforcement and education activities in support of the equal housing rights of families with children, focusing on four high-growth areas--the Bitterroot, Flathead, Gallatin, and Helena Valley housing markets.

A three-person staff (attorney, investigator and administrative assistant) performed the project work under the supervision of the Commission Administrator and with professional research assistance by a joint Montana State University/University of Montana team. The project term was eighteen months, from January 1, 1996 to June 30, 1997.

The project achieved all of its primary goals. The staff collected general demographic data on the four target areas and the university team conducted original research surveying current attitudes towards key fair housing issues in the four selected housing markets, as well as a statewide survey of Montanans. The scope of that original research exceeded the original expectations in the project design.

The project handled 60 separate cases of housing discrimination against families with children. Half of those enforcement actions involved housing providers who controlled or

managed or developed over 1800 units of housing in the target areas. The remainder of the enforcement actions concerned housing service providers -- real estate brokers and agents, advertisers, government agencies, a local board of realtors, and others -- providing supportive services to the target housing markets as a whole.

During the relatively short period when formal enforcement actions were undertaken, the project resolved 32 of the cases by conciliation and settlement agreements after investigation. Almost all of those settlements included an admission by the respondent or defendant that a violation of state or federal fair housing laws had occurred. The conciliations provided more than \$140,000 in settlement awards or financial commitments. In eight cases, the project only had responsibilities for monitoring the performance of past conciliation agreements concerning housing in one of the four target areas. The project made a "no action" determination in four cases based on evidence no reasonable cause to believe a violation of the law had occurred or because the respondent could not be found. In an additional seven cases, the investigation did yield substantial evidence of an unlawful discriminatory practice, but project staff initiated no action in those cases because of a change in legislative policy withdrawing support for state initiated enforcement of fair housing rights. As of June 30, 1997, nine cases remained under investigation or in litigation. At the end of the project, the HRC

reassigned responsibility for concluding the enforcement to its legal counsel.

The project also provided community outreach and education through a variety of media and in a number of different forums. In the one-year period from April 1996 to April 1997, staff counsel presented eleven fair housing seminars in ten different cities, reaching more than 700 individuals statewide, primarily active participants in local housing markets. In the last six months of the grant term, the project produced and audiotaped 16 prerecorded messages for broadcast on local radio stations urging support for the fair housing rights of families with children. Fifteen radio stations in the four target housing markets agreed to broadcast the fair housing messages, ranging in length from 20 to 60 seconds, as a public service and subject to available air time.

The project also produced and distributed an original pamphlet and poster on the fair housing rights of families with children. The pamphlet and the poster provided basic information on the familial status fair housing laws. The staff distributed samples of the educational materials to more than 100 public and private organizations throughout the state.

Finally, nine daily and weekly newspapers agreed to publish *pro bono* an original series of public service articles on fair housing rights and responsibilities prepared by the project staff. An additional eighteen newspapers and specialty publications distributed throughout the state agreed to publish the same original series of public service articles as part of conciliation and settlement agreements resolving past fair housing advertising violations. In all, the project was able to obtain agreements to publish its series on fair

housing rights and responsibilities in newspapers with a combined circulation of more than 400,000 readers.

According to the criteria provided in the grant contract, the Fair Housing Enforcement Project increased the fair housing protections for families with children by every objective measure. The HRC project made advances in understanding patterns of discrimination, in developing enforcement techniques and investigative strategies, and in producing and distributing information about the equal housing rights of families in forums historically unavailable to the Commission.

Outside the activities of the project and the established procedures of the Human Rights Commission, fairhousing enforcement suffered significant erosion. Directed by the lobbying efforts of the Montana Association of Realtors and the state Chamber of Commerce, the 1997 session of the state legislature produced a complete reworking of the enforcement design of the Montana Human Rights Act. Those amendments were signed by the Governor and went into effect on July 1, 1997.

The 1997 amendments to the Human Rights Act did not affect the substantive protections of the state civil rights law. However, the legislature radically changed the means of enforcing the rights protected by those laws. The legislature eliminated the political independence of the Human Rights Commission and transferred the entire HRC staff to different bureaus in the Department of Labor and Industry. The amendments abolished the Commission's intake, investigation, and hearing functions, leaving the HRC as an administrative appeals board only with respect to cases filed after June 30,

1997. The legislature also reduced funding for state civil rights enforcement by nearly one-quarter and placed limits on obtaining any additional funding through any other source for the next two years.

Specific procedural changes in the Human Rights Act adopted by the 1997 legislature included a 50% reduction in the time for filing housing discrimination complaints to 180 days, significant restrictions on the rights of parties to file complaints, prohibiting certain types of claimants from recovering damages, additional limits on agency subpoena powers, increased proof requirements beyond any other Montana civil action for purposes of recovering punitive damages, other limitations on the recovery of damages and civil penalties, increased proof requirements to establish a claimant's right to proceed to an administrative hearing, a one-year limit on the duration of affirmative relief to minimize the likelihood of future violations or correct past discrimination, and increased barriers to administrative jurisdiction over discrimination complaints.

On June 27, 1997, the HUD Office of Investigations and Enforcement notified the State of Montana that the amended provisions of the state's fair housing laws were no longer substantially equivalent to the federal Fair Housing Act. Overall, the recent amendments to the Human Rights Act served to diminish the protection of state civil rights generally and fair housing rights in particular. In light of those legislative actions, the success of the project may be isolated and temporary with little long-term impact on eliminating or preventing the significant incidence of illegal housing discrimination in the state of Montana.

This Final Report of the HRC Fair Housing Enforcement Project seeks to serve two distinct purposes. The first is to recount the accomplishments of the project over its eighteen-month term. It provides a summary of the major research findings, an analysis of the project enforcement actions and major enforcement strategies, and a description of the community outreach, and education activities and their reach throughout the four target areas and the state as a whole.

Second, based on those experiences, the report includes an analysis of the patterns of discriminatory practices identified and recommendations for the future regarding enforcement, outreach, and research strategies. That analysis and those recommendations are intended to preserve the potential gains made in the project for use in promoting equal housing rights for families with children as well as other protected classes. If successful, this project record can be a useful resource to any public or private entity committed to the enforcement of fair housing rights for all persons in Montana and elsewhere.

PART I.

PROJECT RESEARCH ACTIVITIES

Summary

STRONG PUBLIC SUPPORT FOR FAIR HOUSING VERSUS THE CUSTOM OF DISCRIMINATION

The HRC Fair Housing Enforcement Project research activities had three distinct elements: collecting basic demographic data, reviewing the protections for and the barriers to equal housing opportunities in the state, and surveying current attitudes toward fair housing issues. All of those activities sought an improved understanding of current practices and attitudes in Montana housing markets which affect the equal housing rights of residents in general and families with children in particular.

The project first sought to obtain a workable definition of the local housing markets where programmatic activities would occur. It did so by identifying geographical boundaries, relevant judicial jurisdictions, and primary sources of information concerning housing availability in the four selected areas: the Bitterroot, Flathead, Gallatin, and Helena Valleys. The common characteristics of those areas included significantly higher rates of population growth than the state average, higher than average presence of families with children at the beginning of the decade, proximity to larger cities and high use recreational areas, and higher cost housing than statewide averages. These factors, as well as past records of housing discrimination complaints, coincided with the original selection of the target areas for the project plan and with the information obtained during the project term.

Second, the project also examined the legal protections and current industry standards intended to promote equal housing opportunities throughout our communities. Staff conducted legal research on statutory, regulatory and judicial decisions with a concentration on the protection of the equal housing rights of families with children and the limits imposed on those rights since passage of the federal Fair Housing Act Amendments in 1988. In addition, the staff collected published recommendations from a variety of trade and professional associations and from leaders in the housing industry on how to best to achieve fair housing goals and comply with fair housing laws in doing business. At the other end of the scale, staff reviewed the state's analysis of the barriers to equal housing opportunities in Montana and the record of housing discrimination claims in the state.

Finally, the project conducted original research into the current attitudes of Montanans towards fair housing and human rights issues generally, and the application of those issues to families with children. To do so, the Commission engaged an independent research team from Montana State University-Billings and the University of Montana. The research team had the background, expertise, and technical capacity to collect and analyze the necessary information in coordination with the project staff. The results of that original research has both practice and policy consequences.

In terms of practice, the project research has provided an additional tool to develop or refine enforcement and education strategies for protecting equal housing rights in the future. In terms of policy, the research has helped to identify a deepening conflict between the public policy, broadly supported throughout the state, that all persons, including families with children, must have equal housing rights, and an organized opposition and resistance to active enforcement of those rights by persons and professional organizations engaged in businesses providing housing and housing services. As demonstrated throughout this report, that conflict remains unresolved.

A. General Research - Topics and Sources

During the early stages of the project, the staff collected information on the basic demographics in the four identified housing markets and the state of Montana as a whole. They focused on population, household characteristics, and housing stock. Sources for the information included the U.S. Census Bureau, the Montana Association of Counties, Montana League of Cities and Towns, county clerk and recorder offices, tax assessor offices, the Subdivision Land Information System, and county development corporations.

The State Library and the state Department of Highways were sources for topographical maps, aerial photos, and subdivision plats concerning the geography and physical location of the selected market areas. In addition, the State of Montana Historical Society, the Secretary of State's office, county libraries, and the university system libraries were essential in collecting source materials (newspaper, directories, original advertising,

corporate records, assumed name applications, etc.) used in marketing residential real estate in the past seven years and in identifying major participants in the selected housing markets.

The project staff did legal research on an ongoing basis. The staff identified recent precedent setting legal decisions regarding the Fair Housing Act and requested copies of the legal briefs from participating counsel. The cases, such as City of Edmonds v. Oxford House (U.S.S.Ct.), Massaro v. Mainland Sections 1 & 2 (11th Cir.), and HUD v. Mountain Side Mobile Estates (10th Cir.), established important guidelines relating to occupancy standards, exemptions for "housing for older persons," disparate impact, proof of family status discrimination claims, and other difficult issues posed by the amendments to the fair housing laws.

A series of computer searches surveyed current regulations and legal decisions on a wide range of topics related to the equal housing rights of families with children. Staff counsel researched state law and regulations covering trailer parks, building codes, zoning, subdivisions, licensure of real estate agents and brokers, and other topics related to a number of cases. Counsel also prepared legal memoranda relating to issues presented in particular enforcement actions, e.g., standards for plaintiffs' summary judgment on fair housing claims, responsibilities of principals and their agents in complying with fair housing laws, and standards of proof in fair housing advertising cases.

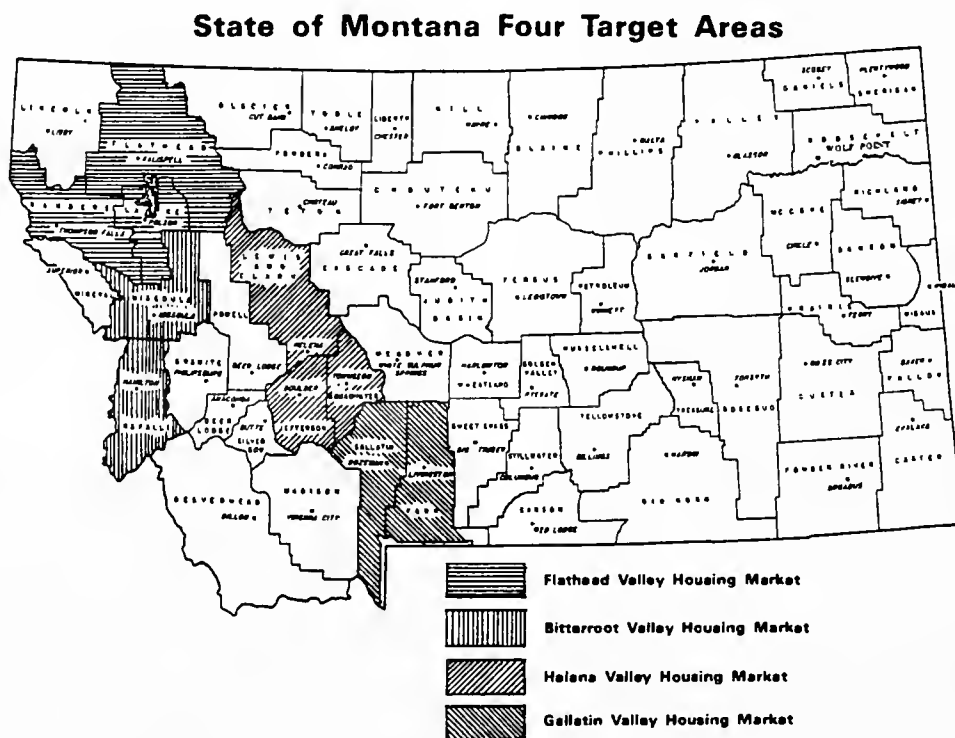
A variety of resource materials came from the private sector. On the provider end of the equation, the project obtained basic texts and reference guides, e.g., Property Management

4th ed. (Kyle & Baird), the Realty Blue Book (Dearborn Publishing, Inc.), the Fair Housing Advertising Manual (Miller, Cassidy, Larroca & Lewin), Freddie Mac's Tools for Expanding Markets, and others. The National

newsletters and recommended applications and leases.

Finally, the state Department of Commerce provided invaluable assistance at several

Table No. 1
Location of Selected Housing Markets in the State of Montana
(Bitterroot, Flathead, Gallatin and Helena Valleys)



Association of Realtors (NAR), at modest costs, furnished a range of its fair housing educational products -- its Voluntary Affirmative Marketing Agreement guide, copies of its Code of Ethics, customer service forms, informational pamphlets, and a training package with video used in continuing education courses. The project also obtained a sampling of the training and informational pieces distributed by local and statewide provider associations to its membership and customers, including levels.

The Local Government Assistance Division furnished a range of materials, including its recent "Analysis of Impediments to Fair Housing" done in compliance with the department's obligations as a recipient of federal funds under the Community Development Block Grant, HOME Investment Partnership, Emergency Shelter Grant, and Housing Opportunities for Persons with AIDS programs. The Division also provided its Montana Land Use Planners Directory and manuals regarding the state's subdivision and

surveying laws and regulations, annexation and planning statutes, model subdivision regulations, affordable housing recommendations, model municipal zoning ordinances, and local land use regulations and the Planning and Zoning Law Digest. The Department's Board of Realty Regulation made available licensing application forms, mock tests, suggested and required reading lists, and applicable statutes and administrative rules governing licensed real estate agents and brokers. Finally, the Census and Economic Information Bureau responded to questions and requests for information throughout the term of the project and provided guidance in locating key demographic and census data.

B. General Research Results

1. Demographics

The Bitterroot, Flathead, Gallatin, and Helena Valleys are located in the western half of the state of Montana, on both sides and along the Continental Divide. See Appendix, Maps Nos. 1-4, identifying the geography of the four target areas. As noted in Table No. 1 on the preceding page, the housing markets where the project focused its activities involved ten of the state's counties: Ravalli, Missoula, Flathead, Lake, Sanders, Gallatin, Park, Lewis & Clark, Jefferson, and Broadwater Counties.

In terms of legal jurisdictions, the four selected areas are covered by eight different state judicial districts (Districts 1, 4, 6, 11, 18, 19, 20 and 21) and three divisions (Billings, Helena and Missoula) of the single federal district court. Appeals from any of the state district courts is direct to the Montana Supreme Court. Appeals from the federal

district courts are to the United States Court of Appeals for the Ninth Circuit.

Housing markets and counties are not the same. The former is a forum for economic activity, the latter a political jurisdiction. Market boundaries can and do change rapidly because of the participants' interests and transactions. County boundaries are fixed by law and political decisions.

Nevertheless, because of the limitations on available data as well as the varying opinions on the location of the housing markets in question, the project used established county lines to collect demographic and housing data on the identified markets. The selection of the ten counties as components of those housing markets corresponded to interviews with persons identified as key participants in market activity, to distribution areas concerning housing availability, and to the primary locations of property advertised in the respective areas.

By 1996, the population of Montanans in the ten counties covering the four selected housing markets was 372,156. That represents better than 42% of the state's total population (879,372). At the beginning of the decade, shortly after the fair housing laws protecting families with children went into effect, those same ten counties accounted for 39.8% of the state's occupied housing stock (121,853 out of a total 306,163 units). The percentage of the housing in the ten counties that was occupied by families with children was nearly 44% (48,850 units), substantially higher than the statewide average of 39.2% (111,970 units).

Growth rates in the four target areas have been among the highest, if not the highest, in the

state since the early 1990s. See Table No. 2 on the following page. While the overall population in Montana increased just over 10% from 1990 to 1996, growth in the

counties covering the project target areas was sometimes two or even three times that rate. In the Bitterroot Valley for instance, the number of residents in Ravalli County

**General Population and Housing Data
(State and Select Housing Markets)**

State	Population 1996 est.	% Increase	Occupied Housing	Housing w/Children
MONTANA	879,372	10.1%	306,163	111,970

Area 1: Flathead Valley
11th, 19th and 20th Judicial Districts

Name of County	Population 1996 est.	%Increase	Occupied Housing	Housing w/Children
Flathead	71,253	20.3%	22,834	9,942
Lake	24,921	18.4%	7,814	2,991
Sanders	10,140	17.0%	3,397	1,184
TOTAL	106,314	19.5%	34,045	14,117

Area 2: Bitterroot Valley
4th and 21st Judicial Districts

Name of County	Population 1996 est.	%Increase	Occupied Housing	Housing w/Children
Missoula	88,523	12.5%	30,782	12,747
Ravalli	33,586	34.3%	9,698	3,752
TOTAL	122,109	17.8%	40,480	16,499

Area 3: Gallatin Valley
6th and 18th Judicial Districts

Name of County	Population 1996 est.	%Increase	Occupied Housing	Housing w/Children
Gallatin	60,565	20.0%	19,015	6,448
Park	16,143	11.5%	5,619	1,861
TOTAL	76,708	18.1%	24,634	8,309

Area 4: Helena Valley
1st Judicial District

Name of County	Population 1996 est.	%Increase	Occupied Housing	Housing w/Children
Lewis & Clark	53,345	12.3%	18,649	8,169
Jefferson	9,668	21.8%	2,867	1,287
Broadwater	4,012	20.9%	1,280	469
TOTAL	67,025	14.1%	22,796	9,925

Table No. 2
Housing Markets by Population, Occupied Housing and Occupied Housing with Children
(Note: Occupied Units and Units with Children 1990 Data Only)

increased 34.3%. Flathead County, Jefferson and Broadwater Counties in the Helena Valley, and Gallatin County each increased more than 20%. Overall, the rate of growth in each of the four markets averaged 50-100% higher than the state as a whole.

With that kind of growth, stress on the supply of housing has been inevitable. Housing costs in the target areas are well known for being among the highest in the state. The pressures to build, to meet the growing demand and exploit the economic possibilities from those circumstances are unavoidable. The question presented for the project was whether fair housing policies are promoted in the bargain. The research indicated they were not.

2. Legal Standards

In March of 1989, families with children had for the first time the full protections of the federal fair housing laws. Housing discrimination based on familial status violated public policy and the law unless the housing in question qualified for one of three narrow exemptions to the law (federally supported senior housing, housing for persons 55 years of age or older, and housing for persons 62 years of age or older). By 1996, the amendments to federal fair housing laws had been analyzed in the regulatory agencies, challenged unsuccessfully in the courts, and fairly well adopted as accepted business practice among most housing professionals across the nation.

As far as the legalities of discriminating against persons because children live in their household, Montana state laws did not differ from the federal protections. In fact, provisions of the state's 1972 constitution and of its Human Rights Act indicate that housing discrimination against minor children has

been illegal here since the mid-1970s. The 1991 legislature underscored those prohibitions by specifically amending the housing provisions of the Human Rights Act to include familial status protections, with the express intent of making state fair housing laws "substantially equivalent" to federal fair housing laws.

Governor Stan Stephens' Advisory Council on Housing Discrimination in conjunction with the Human Rights Commission undertook a major effort in 1991-1992 to provide information to housing consumers and housing providers throughout the state about the changes in the law. Training and education was provided statewide, including nearly a dozen seminars and forums targeted to the four housing markets where the Fair Housing Enforcement Project concentrated its activities five years later.

HUD funded the costs of those educational activities as well as the information gathering mission of the Governor's Council, comprised of three business and industry representatives, three tribal representatives and three consumer representatives appointed by the Governor. The Council's report in January 1992 refuted the recurring myth that Montana "doesn't have much of a discrimination problem." The Governor's Council found that "illegal housing discrimination is a problem throughout Montana that adversely affects all of its residents and the health and vitality of its communities." The Council also concluded that families with children were among the groups most likely to be denied equal housing opportunity in the state's housing markets. Equal Housing Opportunity in Montana?, Final Report of the Montana Advisory Council on Housing Discrimination (January 1992). Independent of those activities, the private sector made a noticeable

effort to inform property owners, landlords, real estate agents, and others involved in housing related transactions about the amended fair housing laws and the means for complying with those laws. The Montana Landlords Association and several property management groups actively promoted fair housing education among their members. Taking guidance from the National Association of Realtors, state and local affiliates distributed information about the changes in the laws and recommended compliance practices. All NAR affiliates were required adhere to the NAR Code of Ethics including its equal housing opportunity obligations. Nearly all of the affiliates signed on to the Voluntary Affirmative Marketing Agreement (VAMA) between HUD and NAR.

The VAMA detailed specific educational and operational practices to promote fair housing. Each member and member association pledged to abide by the agreement. In return, member agents and brokers were relieved of certain federal EHO obligations otherwise required in real estate transactions with federal financing or other government financial support.

A number of specific issues in the application of the law did remain unresolved by 1996 -- the limits of occupancy standards, methods for proving liability based on facially neutral practices which have disproportionate adverse effects on families with children, the obligations of developers providing "housing for older persons" who qualify for exemption from the familial status prohibitions, etc. However, there is little question that the basic tenets of the law, guaranteeing equal housing rights without regard to the presence of children in the household, were well-known and understood nationwide and in the state of Montana by the early years of this decade.

3. Discriminatory Patterns

The original project design for the HRC Fair Housing Enforcement Project assumed that evidence of discriminatory patterns would be difficult to obtain in most of the target areas without extended title research identifying restrictive covenants, fair housing testing, comparative analysis of applicant flows, or the use of other sophisticated investigative techniques. The assumption was wrong. High cost or labor intensive title searches were not necessary. Testing was not used. There was no need for statistical models.

Evidence of patterns of illegal discrimination in the four identified housing markets was open, obvious, and routine. A major investigative technique during the project was to read the classified housing ads in the newspapers, the weekly advertising publications, even the yellow pages of the phone directories. Another successful technique needing no sophistication was to visit a housing development. The billboard advertising "adult living" or the rules and regulations specifying where an "adults-only" section started were hard to ignore.

Conversations with residents of mobile home parks, with friends in the real estate business, with former mobile home dealers, and with long term community neighbors provided project staff on different occasions with the most basic type of leads - directions to the nearest housing complex, apartment building or development excluding or discriminating against families with children. Finally, the office of the Human Rights Commission regularly received complaints of housing discrimination from the public at large.

ONE BEDROOM furnished home West of Toston, suitable for single or couple \$375/mth, first & last month's rent plus security deposit. References required. Call 266-3743 or 266-3549

24x62 in adult park, Placerville, CA. 2 bdrm.; 2 bath. Covered deck & carport. Landscaped. Low maintenance. Furnishings avail. \$49,500. 1-961-4097 eves

PERFECT RETIREMENT, spotless 2 bdrm. in quiet clean court, with fenced yard, covered deck + storage. Owner financing with \$5000. down, \$299/month, only \$150 lot rent 728-9133 or 549-8778.

CURRENTLY elderly clientele.
1-Bdrm. apt., util. pd. 542-7711.

Small 1 bdrm. house w/stove, refrig., and W/D. Suitable for single or couple. Deposit \$150, rent \$200/mo. 832-1453.

APARTMENT FOR RENT—\$250 per month, utilities paid, \$250 deposit. No pets, no kids. Call 225-3710.

2 bdrm. walk-in basement home for right couple. No smoking/pets. Utilities paid. Applications call 832-3521.

71. Magnolia, 14x 62, exc cond, 2 bdrm, 1 bath, storage shed, adult court. Rosauer's area. Must see. \$13,500. 408-825-3330 or 244-5506.

14x70 HILLCREST w/1000, pellet stove, A/C, covered front porch, back patio, storage shed, 3 bdrm, 2 bath, on lg quiet lot in 4-home adult court at Nine Mile. 626-5536

DISCRIMINATORY MESSAGES IN MONTANA HOUSING MARKETS (1996-1997)

In researching the sources of information about available housing in the four selected housing markets, the project staff reviewed classified housing ads from several dozen local publications. In nearly half, the research found unambiguous messages expressing preferences against children. The “no children,” “adults only,” “50 or over,” “adult court,” “adult section,” “perfect for seniors,” “currently elderly clientele,” and “senior preferred” phrases were hard to miss. The number of ads and variety of publications indicated that exclusion or discrimination against families was an accepted way of doing business and relatively unimportant.

The lack of subtlety in many of the patterns of familial status discrimination noted during the project can be illustrated by a few examples. In 1995, anyone approaching one of Flathead County’s major subdivisions or its close-by

golf course passed a conspicuous billboard giving directions to the “adult living” community. The developers had imposed restrictive covenants on the properties excluding any minor residents. The County Commission approved those covenants or their equivalents as the subdivision grew by several phases.

The original presentation for county approval was made by an experienced and prominent attorney from the area. In his presentation, he explained that the developments warranted approval precisely because of the adults only rule because that was what residents wanted and it made the amenities, like sidewalks and schools, unnecessary.

The marketing director and exclusive sales agent for the development who promoted this arrangement was a licensed real estate broker

and a member of the local, state, and national association of realtors and is currently a member of the state legislature. Properties at the subdivision were routinely marketed in the Flathead Valley multiple listing service highlighting the adult only restrictions. The local board of realtors owned and operated the service and centralized the practice of steering families with children away from the housing.

Until advised by the Human Rights Commission staff that the segregated subdivision likely violated state and federal laws, none of the principals noticed the message sent to families with children or the illegal barriers imposed on their equal housing rights. The developers offered a *post hoc* claim that the subdivision was exempt as "housing for older persons." The project conducted a thorough investigation finding that there was no legal or factual basis for the exemption. The matter was settled with admissions by both the developers and the marketing director that their practices had limited the housing choices of families with children and violated the fair housing laws as well as substantial affirmative relief.

In an example from Helena, owners of a mobile home development with more than 200 units had segregated adult households from families for more than fifteen years. Residents advertising units in the adult section were obliged to mention the age restrictions. In November 1995, one long-term resident was forced to move when his household added a minor child. One of the owner's requests that the family move from the park included extraneous remarks demanding to know why the family did not respect the rights of the adults to be in their segregated section. In defense against a claim that the segregation violated state and federal law, the developers offered a score of letters from park residents

in the adult section stating they liked the present arrangement.

In another case from Kalispell, tenants of a 60-unit housing development had to sign off personally on rules and regulations defining half the units as "adults only." Strict rules applied to any children playing off their small yards or even traveling through the adult section. The playground area established for the development was used to store construction equipment and a rusting motor boat. When one of the resident families complained about unequal treatment, the manager began taking and editing videotapes to show their children violating the rules. The family moved as soon as they were able to locate other housing. During the investigation of the complaint, the manager explained that she had always intended to keep kids out of the adult section. The owners main response was that a law providing equal housing rights for children was a "bad law."

Ten years after passage of the amendments to the federal Fair Housing Act and after extensive efforts to educate consumers and providers alike about their rights and responsibilities under those laws, the reasons for the continuing and widespread patterns of housing discrimination in Montana against families with children are still not clear. Why do housing providers, including many licensed professionals and even some of their professional associations, routinely engage in practices that violate the equal housing rights of children? Why do so many housing consumers accept those practices without taking action to protect their rights? Why have state agencies not been effective in affirmatively furthering fair housing opportunities or in protecting free and open housing markets in Montana for families with children?

The answers to those questions do require a more sophisticated analysis. The project sought to begin that analysis by turning to independent research expertise on a matter underlying all of those issues: What do Montanans currently know about families with children and their fair housing rights and do Montanans support those rights?

C. Independent Research on Fair Housing Attitudes in Montana

1. MSU/UM Research Team

In seeking outside assistance to analyze the factors influencing housing decisions adversely affecting children in Montana, the project sought qualified bidders for a subcontract to do the research. After complying with the state's open bid process, the Commission selected a joint research team from Montana State University-Billings and the University of Montana departments of sociology. The members of the team brought to the question a level of expertise and skill otherwise unavailable to the project or the Commission.

The three co-principals of the team were Joe W. Floyd, Ph.D., professor of sociology from MSU-Billings; William H. McBroom, Ph.D., professor of sociology at UM-Missoula; and Fred W. Reed, Ph.D., professor of sociology, also at UM-Missoula. All are tenured faculty at their respective institutions and had worked on a number of research projects together serving both public and private clients. Dr's. Floyd, McBroom, and Reed have published scholarly works in their fields and are recognized as experts.

In support of the principals, the team had assistance from three researchers; Bonnie Bozarth, M.A., American Indian Studies;

Charles Harris, M.A., Sociology; and Dennis Bowker, M.A., Sociology. All were doing graduate work in the field. The statewide survey, supervised by Dr. Floyd, was done at the Computer Assisted Telephone Interviewing Laboratory (CATI Lab) at MSU-Billings with the help of a number of trained interviewers.

The research plan proposed by the team and accepted by the Commission provided a broader work scope, greater data collection ability, and higher level of analysis than was contemplated under the original project design. It also offered an outsider's look at the problem of housing discrimination against families with children.

2. Methodology

The independent research strategy for the project consisted of three stages arranged sequentially so that results at each stage formed the basis for its successor. First, personal interviews were conducted with selected "key informants" in each of the four market areas. The key informants included property developers, property managers, lenders, insurers, planners, licensed real estate agents and brokers, city and county officials, owners of rental property, people who had been subject to discrimination, and experts in the area of housing development and fair housing practices. Forty-seven (47) interviews were conducted. Due to the difficulty of contacting victims of discrimination drawn from past cases resolved by the Human Rights Commission, housing consumers were under-represented. The interviews took place in October and November 1996 and followed a structured interview form with substantial opportunity to provide personal perspectives on the local markets.

At the second stage, the research team held focus group sessions with individuals directly involved in housing activities in each of the four market areas. Two focus groups were held in each market. Participants included property developers, property managers, lenders, insurers, planners, licensed real estate agents and brokers, city and county officials, owners of rental property, people who had personally experienced discrimination, and experts in the area of housing and fair housing laws. A letter of invitation was sent from the Governor's office encouraging participation. Again, more housing providers than housing consumers attended. The focus groups were held in December 1996 and January 1997. The sessions followed a structured outline, presenting general questions, hypothetical problems, and conflicting statements of policy concerning fair housing issues. Periods for open discussion were encouraged under the guidance of members of the research team.

Finally, in stage three, the team conducted and analyzed a telephone survey of 403 randomly selected adult residents in the state. The sample surveyed was "statistically generalizable" to the population of Montana as a whole.

An extensive survey questionnaire was developed based in substantial part on the outcome of the key informant interviews and the focus groups. A random digit dialing technique was employed at the CATI Lab to select telephone numbers. In order to complete 403 interviews, calls were made to 2,045 telephone numbers. A team supervisor was present at all times during the interviewing, which occurred from February 28, to March 4, 1997. After the interviewing was complete, the data were electronically transferred from the CATI computer system to the VAX mainframe system at Montana State

University-Billings. The computer program Statistical Package for Social Services (SPSS) was used to analyze the data.

In terms of its publicly reported results, the survey had a margin of error of +/- 3% in terms of comparable published research results. See Appendix, Floyd, McBroom, Reed (April 1997), "Market Analysis to Determine Negative Factors in Housing Decisions Concerning Children in Montana Housing Markets: Final Report" and "Perceptions of Fair Housing Laws, Fair Housing Issues, and State Fair Housing Enforcement Practices: Results of a Statewide Telephone Survey."

3. Key Person Interviews - Findings

In its final report, the research team summarized its conclusions from interviewing the 47 key informants in the four identified target areas. Among its major findings from those interviews, the researchers found that:

- ° Those interviewed had significant knowledge about fair housing issues and fair housing laws and supported fair housing in principal.
- ° Nearly all were aware that fair housing laws prohibit housing discrimination based on familial status and expressed personal support for protecting the equal housing rights for families.
- ° Nearly all of those interviewed also reported confusion about the "housing for older persons" exemption to the fair housing laws.
- ° Local government officials, licensed real estate agents, and property managers considered themselves very well informed about fair housing laws, while lenders and

developers did not see themselves to be so knowledgeable in the area.

- ° There was a general consensus that good tenants are those who pay rent on time, take care of the property, respect their neighbors, and do not cause complaints.

- ° Prospective home buyers were universally considered “good” prospects if they had financial means and a good credit history. Other factors, such as the potential for being a good neighbor, were not considerations.

- ° A majority of the interviewees stated they were not personally aware of current housing discrimination in their own communities. However, people who were aware indicated that housing discrimination was common.

- ° A number of those interviewed expressed concern about the way in which fair housing laws are enforced.

- ° The key informants considered most families with children and the public in general to be uninformed about fair housing laws.

4. Focus Groups - Findings

The major findings of the MSU/UM researchers from the focus groups they conducted were as follows:

- ° Focus group participants were aware that a considerable amount of housing discrimination exists in the state of Montana.

- ° Participants considered many people to be uneducated about fair housing laws, with most housing discrimination perpetrated by “mom and pop” landlords. The groups believed that professional housing providers (licensed real

estate agents, property managers, and others) were not likely to discriminate because of the potential harm to their careers.

- ° The groups expressed the opinion that fair housing was consistent with good business. Protected classes, including families with children, were not viewed as imposing disproportionate wear and tear or causing more problems than other residents or tenants.

- ° Many of the participants considered Montana real estate laws as an advantage for tenants and a disadvantage to property owners. In their view, tenants often do not obey the law and may take unfair advantage of fair housing laws. Those in the rental housing business tended to see all of the laws together as an intrusion on their business without distinguishing between antidiscrimination laws, landlord-tenant laws, and others. Perceptions about fair housing laws may be influenced by their adverse reactions to state landlord-tenant laws.

- ° Focus groups considered housing costs, including inflation and building costs, to be major impediment to access to housing opportunities for protected classes.

- ° Participants considered fair housing advertising laws unworkable. When presented with several hypothetical ads, the participants considered few discriminatory.

- ° The focus groups included two distinct perceptions about discrimination laws. One group stated that the laws were necessary, fair and just in intent, and seemed to have little direct experience with enforcement of the laws. The other stated the laws were necessary and just, but viewed state enforcement as violating due process and generally unfair and oppressive. The groups generally viewed

testing as a necessary investigative tool in many discrimination cases but some participants thought Montana testers used techniques to entrap guileless and well intentioned citizens.

° Most participants expressed a belief that fair housing laws are necessary and that their intent is fair and just. Based on an apparent sense of justice, they agreed that housing opportunity should not be limited because a person is a member of a protected class.

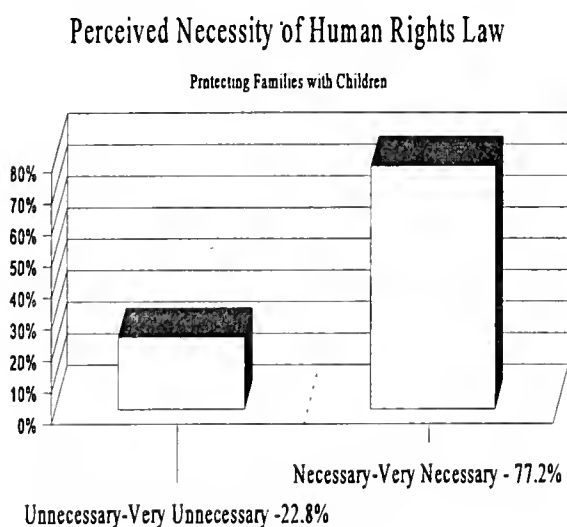


Table No. 3

5. Statewide Survey - Findings

As noted in the final market analysis report presented by the research team, "[u]nlike the interviews and focus groups which were conducted with very nonrepresentative groups of individuals in the Gallatin and Bitterroot, respondents to the survey were a randomly selected sample of all adult residents of Montana." The team's conclusions from the

telephone survey were therefore statistically representative of Montanans as a whole. Major findings in the survey included the following:

° Generally, respondents did not consider themselves knowledgeable about either fair housing laws or fair housing issues in their communities. However, when asked if it was illegal to discriminate on a particular basis, more than 90% correctly knew it was unlawful to discriminate on the basis, more than 80% knew it was illegal to discriminate on the basis of disability, religion or sex, and more than 70% knew that it was illegal to discriminate based on age, marital status or family status. While the percentage of correct answers were high in every category, correct answers about the equal housing rights of families with children had the lowest percentage of respondents (71%).

° A significant majority of Montanans view fair housing laws prohibiting discrimination on the basis of race, religion, disability, sex, age, marital status, and family status as necessary or very necessary, from 67% to 87% depending on the protected class. 72.7% considered the laws protecting families with children as necessary or very necessary. See Table No. 3.

° A strong majority of Montanans view the laws prohibiting discrimination on the basis of race, religion, disability, sex, age, marital status, and family status as fair or very fair, from 80.4% to 89.9% depending on the protected class. 83.2% of the respondents considered the laws protecting families with children as fair or very fair. See Table No. 4.

Perceived Fairness of Human Rights Laws

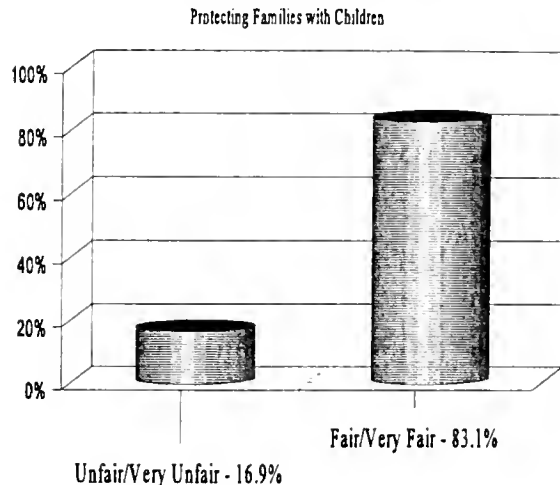


Table No. 4

° Few Montanans believe that the laws prohibiting discrimination do not work. Less than 4% believe that laws protecting people from discrimination based on marital status or religion do not work. Less than 10% of Montanans believe that laws protecting people from discrimination based on age, sex or disability do not work. 13.9% responded that the laws protecting persons from race discrimination do not work. Regarding families with children, 10.1% of the respondents said the discrimination laws do not work, while nearly five times as many (46.8%) responded that those laws worked very well. See Table No. 5.

Perceived Effectiveness of Human Rights Laws

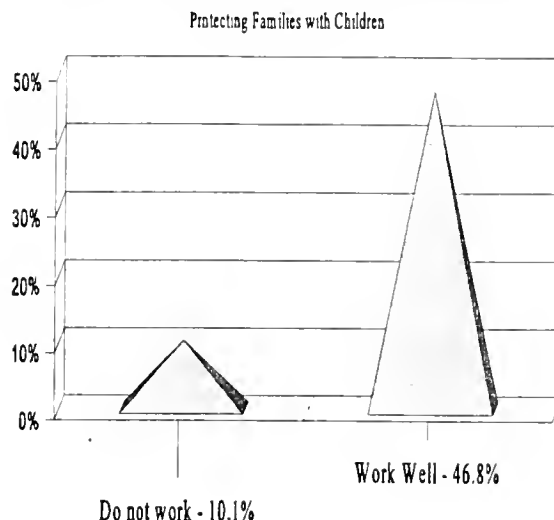


Table No. 5

° Setting aside issues of sexual orientation and college student status which are not protected class characteristics under state or federal law, the survey indicated that the absence of children in a household was the most important determinant to respondents for desirable neighbors. Elderly people were considered more desirable as neighbors than the middle aged. Younger children were considered more desirable as neighbors than teenagers. Two children were considered more desirable than four children.

° A significant majority of Montanans view the Human Rights Commission positively. More than 6 out of 10 respondents knew of the Commission. On a worthwhileness scale of 1 to 10, 59.7% of those who knew of the Commission rated them 6-10 and only 16.8% Table No. 6 rated the Commission less than a 5. More than 68% of those familiar with a case in which the Commission enforced fair housing laws believed the action was

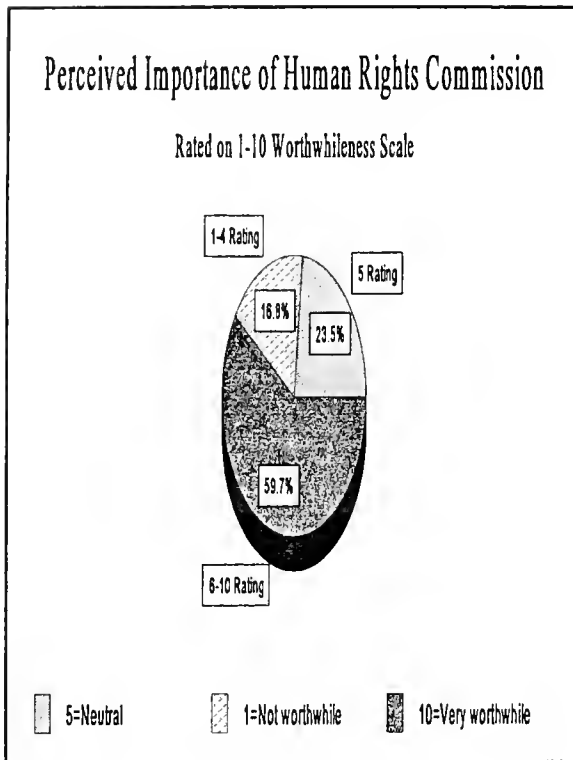


Table No. 6

necessary or very necessary and better than two thirds also considered the enforcement action to be fair or very fair. See the Table No. 6.

° As measured by the Bensen and Bensen scale, Montanans with negative attitudes towards children tended to be male, be older persons, report unhappy childhoods, have low incomes, and do not know the names of many of their neighbors. In addition, they express a preference for having elderly, white, childless couples for neighbors and express a dispreference for having a Native American family with two children as neighbors.

° As measured by the Diaz-Veizades et al. scale, Montanans who support fair housing are likely to value having an Indian family with children for neighbors and less likely to value an elderly, childless, white couple for neighbors.

° As measured by the Overall Attitude Towards Children Scale (OATCS), which members of the team developed specially for this project, the following were among the bivariate relationships found in the survey:

- Women scored statistically higher than men. The older a respondent, the lower his or her OATCS score.

- Respondents who had known someone who had experienced housing discrimination scored higher on the OATCS than those who did not know anyone experiencing discrimination.

- Respondents who had experienced difficult neighbors in the past five years scored lower on the OATCS who had not.

- The higher respondents' scores reporting on childhood happiness or on the sociability question, the higher their scores on the OATCS.

- The more people in the respondents' households and the more siblings reported by respondents, the higher his or her score on the OATCS.

- The more worthwhile the respondents' viewed the state's civil rights agency, the higher their scores on the OATCS.

PART II.

PROJECT INVESTIGATION AND ENFORCEMENT ACTIVITIES

Summary

INCREASED EQUAL OPPORTUNITIES AND THROUGH STRATEGIC ENFORCEMENT

The primary goals of the Fair Housing Enforcement Project were to increase housing opportunities for families with children through active enforcement of the fair housing laws and to develop a model for statewide enforcement strategies by focusing on four key housing markets in the state. In terms of measurable results -- the number of housing units affected, the number of violations proven or admitted, the types of discriminatory practices abated, the relief obtained -- the project surpassed the expectations of the original grant agreement.

In terms of potential as a model for future state enforcement, however, the project did not succeed for reasons outside the grant activities. The Montana legislature, during its 1997 session, took steps which will diminish effective state enforcement of fair housing laws and will likely eliminate substantial equivalency between state and federal fair housing laws. Whether the project serves as a model for strategic enforcement elsewhere remains uncertain, although its basic design is adaptable to other jurisdictions as well as the private sector.

During its eighteen month term, the project handled sixty (60) cases in accordance with the project protocols adopted in April 1996. The Human Rights Commission assigned 5 cases directly to the project, the HRC Administrator assigned 26 cases from the general caseload of the Commission staff based on geographical location and type of discrimination alleged, and

the project research and investigation activities resulted in an additional 29 cases. All of the assigned cases met two basic criteria, i.e., the facts suggested a policy or pattern of housing discrimination against families with children, and the housing was located in one of the select markets or the respondent(s) did business in one of those markets.

The project enforcement actions addressed a wide range of discriminatory practices. Half of the cases (30) involved "bricks and mortar" issues, i.e., relief which sought to eliminate discrimination at residential properties and increase the actual number of housing opportunities available to families. In those cases, respondents were owners, property managers, developers, homeowner associations, and others who controlled access to housing units spread over the four markets.

In the "bricks and mortar" cases, the discriminatory practices at issue were often open and obvious. Violations included age-specific rental policies, restrictive covenants, developments segregated into adult and family sections and discriminatory advertising or marketing of those opportunities. Less conspicuous violations involved occupancy standards based on fewer than 2 persons per bedroom or per unit, preferences for "singles" or "couples," differences in levels of services and amenities based on familial status, and surcharges and fees for adding persons to a household. In five of these cases, respondents claimed exemption from the fair housing laws on the grounds that they were providing "housing for older persons." The exemption claims often arrived after notice of a complaint and as a *post hoc* rationalization of the discriminatory practice. None of the

respondents claiming an exemption produced sufficient evidence to qualify their housing as exempt under the law.

The remaining 30 enforcement actions concerned supportive services affecting an entire housing market or a segment of a housing market. These “housing service” cases involved respondents who were not direct housing providers but key participants in the delivery of housing to consumers, e.g., real estate firms, brokers and agents, mobile home dealers, daily and weekly newspaper publishers, a local government agency responsible for development review and approval, and a multiple listing service. Respondents in the “housing service” cases had repeated contact with a large number of consumers and providers, as well as involvement in a high volume of real estate related transactions. Ending discriminatory practices in those cases probably had a greater impact on the supply of housing for families with children than any of the “bricks and mortar” cases, even though the exact number of housing units affected could not be measured.

The project employed a variety of strategies in the enforcement actions based on the type of discriminatory practice, the potential impact on the overall housing supply, the character of the evidence indicating a violation, the number of injured parties identified in the investigation, and the degree of resistance to the equal housing rights of families with children and others demonstrated by the respondent. Depending on the investigative findings, the staff would also determine requests for relief on a case-by-case basis. As a general practice, the project pursued remedial relief which included an admission of the violation, compensation for injured parties, adoption of business practices demonstrating an understanding of the laws, and commitments to comply with the fair housing laws and to support equal opportunity at the

housing in question or in the communities where the services were performed.

In response to the claims, respondents offered a variety of defenses. In direct evidence cases, housing and service providers alike offered explanations that there was no intent to discriminate against families, there was no harm done by the violation, and there was confusion about how to comply. In the disparate impact cases, respondents claimed business necessity, often related to sewer and water capacities, and absence of an intentional violation. In both types of cases, the principal respondents emphasized that someone else was to blame: a government agency, an attorney, a negligent employee, a newspaper publisher, and in one case, a mother-in-law. When all else failed, many respondents tended to blame the Human Rights Commission for “heavy handed” enforcement toward the “guileless and well intentioned.”

As a companion to the blame defense, respondents sometimes pursued a political defense unrelated to the merits of a complaint. In those instances, respondents contacted a variety of elected and appointed state officials in an apparent attempt to influence the enforcement action. In addition, several lobbied the legislature to dilute the general enforcement powers of the Commission. In the end, attempts to affect the outcome of a particular case by political influence did not succeed. However, the project stopped filing staff-initiated complaints in response to a change in legislative support for fair housing enforcement. As a result, seven cases where there was direct evidence to support a finding of a violation of the law were not filed due to the legislative policy change.

The project did not seek civil penalties or punitive damages in any case settled during the project term. The protocols provided that those

remedies would only be appropriate to fully litigated enforcement actions. As a general rule, the project also did not seek reimbursement of the costs of investigation or enforcement. Settlements instead directed monetary commitments to affirmative relief and educational activities, although there were exceptions where enforcement costs increased because of a failure of respondents to cooperate or where HRC administration of a settlement extended months into the future.

Results from the FHEP investigative and enforcement activities exceeded the objectives of the original project design. In terms of housing opportunities, the FHEP cases assured increased availability to families with children at more than 1,800 units spread through the four target areas. In the discriminatory advertising cases, the project obtained agreement to distribute a series of public service articles about fair housing rights and responsibilities in newspapers and other publications with a combined circulation of over 340,000 readers. In 30 of the 32 cases resolved by a conciliation agreement by the end of the project, the staff secured admissions that respondents had violated state or federal law, increasing the degree of accountability in the event of any future violation. At a minimum, the dollar value of the settlement awards exceeded \$140,000 in terms of compensation for injured parties and affirmative relief.

Simultaneous with the success of the fair housing enforcement activities, however, the 1997 Montana legislature enacted amendments to the Human Rights Act which will likely prevent or diminish state enforcement of fair housing rights of Montanans far into the future. As a result, long-term success of the project as a model for strategic enforcement to be used throughout key housing markets in the state is now equally unlikely.

A. Distribution of Enforcement Cases

1. Geographical Distribution

FHEP enforcement actions were divided in fairly equal proportions among the four target areas. Excluding the eight settlements reached in the first months of the term which the Commission assigned to the project for monitoring only, the project handled 17 cases from the Bitterroot, 15 cases from the Flathead, 11 cases from the Gallatin, and 9 cases from the Helena Valley.

HRC Fair Housing Enforcement Cases

By Number of Cases and Housing Market

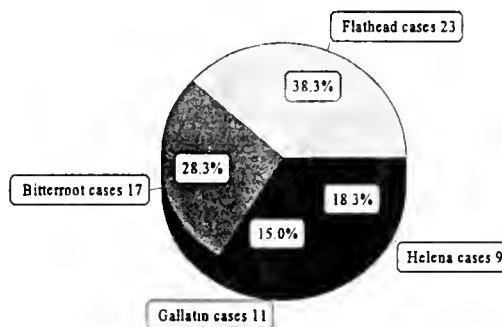


TABLE NO. 7

Table 7 depicts the distribution of all cases by market.

Although market distribution in terms of number of cases was roughly equal during the project term, the project did observe a distinction in patterns of discriminatory activities in the four areas. The most widespread pattern of illegal discrimination was identified in the Flathead Valley. There was substantial evidence in that area demonstrating

involvement in discriminatory practices by major housing providers and service providers alike and an active resistance to enforcement of fair housing laws.

Discriminatory patterns identified in the other areas were not as apparent in terms of the disregard for the equal housing rights of families with children or others. Excluding the major advertising cases which often covered more than one market, discriminatory practices were least obvious in the Gallatin Valley, followed by the Helena Valley and then the Bitterroot.

The project did not determine whether the geographical distinctions in patterns of discrimination were functions of local regulation or planning, prior human rights investigations, the quality of private services, market forces, or other factors. In fact, the statewide survey conducted by the MSU/UM research team found no discernable statistical differences in responses for or against equal housing opportunities for children or other protected classes based on the location of respondents.

2. Housing Impact Distribution

The amount of actual housing opened to families with children as a result of project enforcement activities totaled 1,806 units. Table No. 8 notes the distribution of those units among the four housing markets.

In terms of the total housing stock in the four markets, that number of units represented 3.7% of the housing occupied by families with children as noted in the 1990 census count. See Table No. 2, Part I, Section A.

3. Types of Respondents

As noted above, there were two types of enforcement actions undertaken during the project: "bricks and mortar" cases and

FHEP Fair Housing Enforcement Cases

By Number of Affected Units and Housing Market

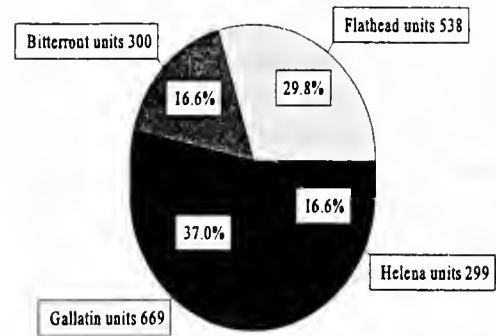


TABLE NO. 8

"housing services" cases. Generally, the type of respondent depended on the type of case. In many instances, however, respondents fell into more than one category. Table No. 9 identifies the numbers and types of respondents in the project enforcement actions as a whole.

As noted in the table, although no particular group was targeted for enforcement action, more than 25% of the cases involved respondents licensed as real estate agents or brokers or real estate firms. The fact that one in four of these policy and practice cases involved professionals in the real estate industry raises questions about the reliability of individual complaint numbers as a valid indicator of discriminatory patterns and about the primary sources of the discrimination problem.

FHEP CASES BY TYPE OF RESPONDENT/DEFENDANT

TYPE OF RESPONDENT/DEFENDANT	# OF CASES	% TOTAL CASES
HOUSING PROVIDER (LESS THAN 4 UNITS)	13	19.1%
HOUSING PROVIDER (4-39 UNITS)	6	8.8%
HOUSING PROVIDER (40+ UNITS)	12	17.6%
HOMEOWNER ASSOCIATION	3	4.4%
LICENSED REAL ESTATE FIRM/BROKER	8	11.8%
LICENSED REAL ESTATE AGENT	9	13.2%
NEWSPAPER	8	11.8%
SPECIALTY PUBLICATION	4	5.9%
MULTIPLE LISTING SERVICE	1	1.5%
GOVERNMENT AGENCY	2	2.9%
MOBILE HOME DEALER	2	2.9%
TOTAL	68*	100%

TABLE NO. 9

* Number of Respondents/Defendants Exceeds 60 Due to Multiple Parties or Status in FHEP Cases

Over the past several years, the Human Rights Commission received barely a handful of individual housing discrimination complaints against licensed real estate brokers and agents. Differences between the historic caseload and the project may be attributable to a variety of reasons. Factors to consider in analyzing those differences should include the large percentage of individual complaints filed with the HRC that involve rental housing as opposed to sales or development, the type of discrimination at issue (refusals to rent, segregated family/adult sections in the same development versus steering, restrictive covenants, discriminatory marketing decisions, etc.), the lack of nondiscriminatory alternatives for prospective renters compared to those for prospective purchasers, or a combination of those factors and others.

Many professionals in the housing industry have offered an analysis that “mom and pop” operations are the most likely culprits in impeding equal housing opportunity in Montana markets. The results of the project did not corroborate this notion that small independent rental operations are the primary source of housing discrimination. The project case data did suggest that violations based on actual ignorance of the law were more likely in that segment of the market and the numbers would likely be higher, but the total housing units affected remained fairly low. The case data also indicated that the larger operations and the professional service providers who engaged in discriminatory practices had a much greater influence on limiting the availability of housing to families with children.

4. Distribution by Forum and Current Status

As of the end of the grant term, more than two-thirds of the cases handled by the project had been resolved by conciliation and settlement. Eight cases remained open. Four cases had been resolved prior to filing the complaint by determining there was not substantial evidence to proceed or the respondent was outside the jurisdiction. The project took no action on the remaining seven cases, although there was substantial evidence to warrant a formal investigation. The project did not pursue complaints because of the 1997 session which withdrew support for state-initiated enforcement of fair housing rights. Table No. 10 details the distribution of cases by forum and status.

project research or investigation, the project team contacted the respondent before or shortly after filing a complaint to determine the possibility of a conciliation. Almost all of those cases settled early.

In those small/independent housing provider cases, the project sought to bring the property owners and managers into compliance with the law, establish a record of the violation to assure a greater degree of accountability in the future, and enlist support for fair housing in their communities. As a general practice, the conciliation agreements included an acknowledgment of the violation, a commitment to future compliance with the laws and basic record keeping in their housing transactions, and publication of a single public service notice in local newspapers stating support for the equal housing rights of families with children.

Distribution of Cases by Forum and Current Status

CASE FORUM/STATUS	Settled in Project	Pending	NoCause	No Action - Policy Change	Totals
Court Action	1	2	x	x	3
Administrative Hearing	3	x	x	x	3
Investigation	20	6	x	x	26
Pre-Complaint	9	x	4	7	20
Monitoring Only	8	x	x	x	8
Totals	41	8	4	7	60
Percentage	68.3%	13.3%	6.7%	11.7%	100%

Table No. 10

B. Enforcement Strategies

1. Low Volume/Independent Providers

In cases involving owners or managers of less than 4 housing units initiated because of

The project did not pursue awards for damages, civil penalties, costs or fees in the small housing provider cases. Except for the costs of the single public service notice, the respondents had no additional financial expenses in the conduct of their businesses.

2. Publisher Cases

Nearly one in five of the project enforcement actions concerned violations of the fair housing advertising laws. §49-2-305(3), MCA, and 42 USC §3604(c). One case involved a major daily newspaper, seven involved local weekly papers, three were weekly advertisers, one was a telephone directory publisher and one was a multiple listing service. Basic research at the county libraries, the historical society, and simple collection of current issues of the various publications identified violations of the law. Classified housing ads and listing notices included a variety of words and phrases openly expressing discriminatory preferences. Ads discriminating based on familial status were most common, followed by ads stating limitations based on marital status, age, and gender.

In the publisher cases, distinctions were noted based on the size of the distribution area, the volume of advertising, total number of employees, and familiarity with the laws. With some of the small community newspapers, publishers appeared to have no knowledge that their commercial advertising might be subject to fair housing laws. At the other end of the spectrum were a major publishing company and the multiple listing service, both of which distributed their publications well beyond a single housing market.

The publishing company, with corporate headquarters out of state, had previously dealt with fair housing advertising issues in Montana and elsewhere. The recurrence of discriminatory ads appeared to be confined to a few of its publications, one daily newspaper, and three advertisers where staffing changes and advertising volume presented a difficult challenge in assuring 100% compliance. For

multiple listing service, owned and operated by a local board of realtors affiliated with the National Association of Realtors, the repeated publication of discriminatory ads over a period of years was not explained. The board of realtors had pledged compliance not only with fair housing laws, but also to the HUD-NAR voluntary affirmative marketing principles and the NAR Code of Equal Opportunity throughout that period. Continuous acceptance and distribution of discriminatory listing notices were inconsistent with those obligations.

Relief in the publisher cases, except for the pre-project settlement with the multiple listing service, included an acknowledgment of the discriminatory message communicated by the subject ads and a requirement to publish a series of public service articles concerning fair housing rights and responsibilities prepared by the project staff. Those settlements offered a practical means for reaching a large percentage of the readers exposed to discriminatory advertising and providing them with accurate and positive information about fair housing. See Table No. 11.

In a few of the project cases where the frequency of the discriminatory ads was high or the distribution extensive, settlements required additional terms and conditions to rectify the likely harm from the advertising in question and to reduce the likelihood of future violations.

3. Professional Service Providers

As a general rule, strategies in the housing service cases depended on the facts of the case. In one case, the remedy to minimize future violations translated into a requirement that the respondent retire and relinquish his real estate license. In another case, involving a professional mobile home dealer, the

Table No. 11
DISTRIBUTION OF FAIR HOUSING PUBLIC SERVICE ARTICLES
Newspapers Agreeing to Publish Articles as a Term of Conciliation Agreement
by Name, Location and Circulation

NEWSPAPER/PUBLICATION	PRIMARY DISTRIBUTION LOCATIONS	CIRCULATION
<i>Billings Gazette</i>	Statewide, with major distribution market in Yellowstone County and surrounding areas	62,591
<i>Montana Standard</i>	Primary distribution in Butte and Silver Bow County and surrounding areas	18,000
<i>Independent Record</i>	Primary distribution in Helena Valley and surrounding areas	14,589
<i>Missoulian</i>	Statewide, with major distribution in Missoula, Flathead, and Bitterroot Counties	41,000
<i>The Adit</i>	Major distribution in Lewis and Clark, Broadwater, and Jefferson Counties	24,000
<i>The Mini-Nickel</i>	Gallatin County and all of South Central Montana	25,000
<i>Western Montana Messenger</i>	Missoula and Bitterroot Valleys	35,000
<i>Thrifty Nickel</i>	Yellowstone County and surrounding area	30,000
<i>Consumers Press</i>	Great Falls and surrounding area	34,000
<i>Life and Times Press</i>	Bitterroot Valley	12,000
<i>Nickel Saver</i>	Silver Bow County and surrounding areas	10,000
<i>The Trader</i>	Beaverhead County and surrounding areas	8,000
<i>Western Shopper</i>	Deer Lodge and Powell County	4,600
<i>Yellowstone Shopper</i>	Billings and Yellowstone County	18,000
<i>Three Forks Herald</i>	Gallatin Valley	1,250
<i>Boulder Monitor</i>	Helena Valley	1,300
<i>Lone Peak Lookout</i>	Gallatin County	5,000
<i>West Yellowstone News</i>	Gallatin and Madison Counties	1,892
TOTAL		346,222

respondent made himself available for a deposition to testify about his knowledge of continuing practices to exclude or segregate families with children. Although formal discovery offered an alternative method of obtaining the same information, the settlement agreement served as a much quicker and more cost efficient device for doing so. As a result, that enforcement action has already produced significant information about discriminatory practices at housing developments in two of the target areas.

In cases where respondents included resident managers or other support personnel who carried out a discriminatory policy of an owner or developer, the project sometimes cited the agent or employee for an "aiding and abetting" violation of the Human Rights Act. §49-2-302, MCA. The distinction between the policy maker and the person implementing the policy conformed to the differing levels of responsibility. It also afforded the project a basis for reaching a separate, less exacting settlement from the subordinate along with information about historic practices at the site and expressions of intent from their principal.

In cases involving licensed real estate brokers or agents other than those where the project had only a monitoring responsibility, conciliations generally included binding commitments to follow one or more of the affirmative marketing strategies and principles found in the Voluntary Affirmative Marketing Agreement between HUD and the NAR. Those commitments extended beyond December 1996, the VAMA expiration date.

Investigations conducted by the project yielded substantial evidence that many licensed real estate agents and brokers did not give great consideration to their pledges under the HUD-NAR voluntary agreement. That lack of regard for the affirmative marketing strategies and principles in the VAMA

conflicted with the privileges enjoyed by VAMA subscribers who were relieved of federally mandated affirmative marketing obligations, and federally financed or supported housing transactions as a result of their voluntary pledges.

C. Major Cases

Ten of the sixty FHEP enforcement actions can be characterized as major cases based on the number of housing units affected, the relief obtained, and the fact or legal issues presented.

The major cases are summarized below. Copies of relevant conciliation agreements, cases analyses, and orders relevant to the cases are found in the Appendix.

1. Glacier Village Greens

Glacier Village Greens is a residential subdivision in Flathead County, Montana. The subdivision is comprised of 219 residential lots. Glacier Village Greens limited occupancy to adults over the age of 18 in violation of federal and state fair housing laws based on age and familial status.

The subdivision's developers and exclusive sales broker claimed an exemption from the Human Rights Act as "Housing for Older Persons." After an extensive investigation including interviews with the principals, a review of several hundred planning and operational records, and a survey of a sample of residents, the project issued a final investigative report on March 31, 1996. The Final Investigative Report indicates that the evidence did not support the exemption claim and that there was direct evidence of a continuing violation of the fair housing laws for at least five years. The investigation of the subdivision specifically found that:

(1) respondents had engaged in not less than 36 separate violations of the fair housing laws;

(2) the corporation engaged in a pattern or practice of violation of the equal housing rights of families with children;

(3) the respondents caused a number of persons and entities in the Flathead Valley to violate fair housing laws concerning properties at Glacier Village Greens during the period September 1991 to September 1995;

(4) the practices of respondents adversely affected the equal housing rights of families with children throughout the Flathead housing market.

The Human Rights Commission filed a pattern and practice complaint in Lewis and Clark District Court on July 31, 1996. The parties executed a final settlement agreement on October 8, 1996. The terms and conditions of the agreement were:

a) The developers admitted violating state and federal fair housing rights of families with children on a continuing basis.



Glacier Village Greens Billboard, Circa 1995

b) Respondent agreed to market property in the Glacier Village Greens as available for sale or occupancy regardless of familial status, sex, marital status, age, race, color, national origin, mental or physical handicap, religion or creed.

c) Respondent agreed to commit \$15,000.00 to marketing efforts for Village Greens that would include advertisements advising that the residential properties were available on an equal opportunity basis and that families with children were welcome there.

d) Respondent agreed to publish public notices in area newspapers announcing to the general public that the Glacier Village Greens subdivision is no longer restricted to occupancy by persons over the age of 17 and that families with children are welcome.

e) Respondent agreed to spend \$5,000.00 to construct a fully accessible playground area for children in the Glacier Village Greens Homeowners Park.

f) Respondents agreed to spend at least \$4,000.00 to modify the parking spaces at the common use facilities to comply with standards of the Americans with Disabilities Act.

g) Respondent agreed to other remedial acts including written commitments from employees and agents to comply with the fair housing laws and continuous reporting to the Commission on their progress in satisfying the agreement.

As a result of this enforcement action, a 219-lot subdivision was made available for occupancy by families with children and was brought into compliance with fair housing laws based on familial status, age, and disability. Respondents also agreed to perform a number of tasks to minimize the

likelihood of future violations, including affirmative marketing of the housing opportunities to families with children. Owners and developers of the subdivision admitted violations of state and federal fair housing laws and may be held to a higher degree of accountability in the event of any future violations.

2. Lee Enterprises, Inc.

Lee Enterprises, Inc., the largest newspaper publishing chain in the state, owns and operates 15 daily newspapers and weekly publications distributed in the Bitterroot Valley, Flathead Valley, Helena Valley, and Gallatin Valley housing markets and elsewhere. Corporate headquarters are located in Des Moines, Iowa.

Project research identified discriminatory ads in a number of newspapers owned and operated by respondent during the period after the execution of a November 1994 conciliation agreement in which respondent agreed not to violate the fair housing advertising laws in the future. Discriminatory words and phrases published on a regular basis by the subject newspapers in classified housing ads included, without limitation, the following: *adults, adult court, mature occupants, currently retired, currently elderly, prefer female, prefer senior, suitable for single, perfect retirement, senior court, and others.*

Prior to filing a formal complaint, the project staff notified respondent of the occurrence of discriminatory ads. The parties entered into extended negotiations during the period November 1996 through June 1997. A settlement agreement was reached on June 30, 1997.

The terms and condition of the comprehensive settlement agreement were:

a) Respondent admitted to publishing discriminatory housing ads in the Missoulian, ADIT, Western Montana Messenger, and Thrifty Nickel during the period after November 1994. Respondent acknowledged that an attached list of words and phrases which were included in those ads constituted a prima facie violation of the fair housing advertising laws.

b) Respondent agreed to exercise all reasonable efforts in good faith to comply with fair housing advertising laws in the future.

c) As compensatory relief, respondent agreed to establish a settlement fund up to \$15,000.00 payable to persons demonstrating that they were members of a protected class (based on familial status, gender, or age), that they were seeking housing or changing housing when respondent published a discriminatory ad, that they likely read a discriminatory ad published by respondent and were discouraged from applying for the advertised housing. Claimants filing within three months of the execution of the agreement and presenting substantial evidence in support of those claims will be entitled to a payment of up to \$250.00 from the settlement fund unless contested by respondent. Contested cases are to be heard before the Commission and respondent agreed to pay separately any award obtained from those hearings. In event that there are more than 60 proven claims filed, payments will be made on a pro rata basis.

d) As affirmative relief, respondent agreed to publish a series of six public service articles in each of the respondent's newspapers and publications in Montana. The respondent agreed to distribute information to advertising staff and persons seeking to place ads advising them that publication of discriminatory housing ads may subject them to liability under the fair housing laws. Respondent

agreed to conduct training of advertising staff on an annual basis with the assistance of the Human Rights Commission staff, if requested. Respondent further agreed to review classified housing advertising at least every three months and to report any discriminatory ads with the name and address of the person placing the ad. Respondent finally agreed to cooperate with the Human Rights Commission upon lawful request in the investigation of any future case of unlawful housing discrimination which includes an allegation of an unlawful ad published in any of respondent's newspapers.

e) The Commission agreed not to initiate any staff enforcement action against respondent unless the frequency of illegal ads exceeds .25% of the total classified real estate advertising in that newspaper in a three-month period. The Commission also agreed not to initiate any enforcement action against respondent based on ads identified by respondent and reported to the Commission.

The Commission acknowledged that the affirmative and compensatory relief set forth in the agreement was sufficient to rectify the harm done, if any, to persons aggrieved by the past discrimination of the respondents.

f) Respondent agreed to reimburse the Commission for the costs and expenses of its investigation and administration of the settlement up to the sum of \$5,000.00 in the event that the subject claims are not covered by an enforcement agreement between HUD and the Human Rights Commission.

g) The parties stipulated that the comprehensive settlement agreement does not interfere with or limit the performance of its statutory duties in processing any complaints made by a person claiming to be aggrieved. Respondent is not precluded from offering the agreement in any proceeding as evidence that

a claimant would have been entitled to compensation under its terms.

As a result of this enforcement action, a model agreement was reached with the largest publisher of classified housing ads in the state of Montana. The agreement provides for substantial compensatory and preventative relief and establishes a "fresh start" for the publisher with a set of guidelines to minimize the likelihood of future violations. The agreement also establishes protocols if discriminatory ads are published inadvertently with other provisions applying if a sufficiently frequent pattern of discriminatory ads occurs. The focus of the protocols is directed to increasing the amount of housing that is available on an equal opportunity basis, especially for families with children, and provides a practical method for identifying housing where discriminatory practices may be in place.

3. Century 21 Home and Investment Center, Inc., and Broker/Owner Larry Lee

Century 21 Home and Investment Center, Inc., is a real estate firm with more than 20 agents and brokers operating in the Flathead Valley housing market. Larry Lee is the sole owner and managing broker.

The project filed an administrative complaint against the respondents on April 16, 1996. The complaint generally alleged that agents and brokers of Century 21 HIC had a routine practice of denying equal housing opportunities to families with children. The complaint included allegations that the firm regularly advertised preferences based on age and familial status and aided and abetted others in making housing accommodations in the Flathead Valley housing market unavailable to families with children.

After an extensive investigation which included a deposition of the managing broker and production of over 1,000 pages of documents, a final investigative report was issued in November 1996 finding substantial evidence to support the allegations in the complaint. The report specifically found that there was reasonable cause to believe that the respondents had engaged in publication of discriminatory notices, illegal steering practices, and aiding and abetting denial of equal housing opportunities to families with children. The report also noted that Lee was a member of the Flathead Board of Realtors and chair of its MLS committee when the discriminatory notices were published. Lee and his firm were also 1992 signatories to the HUD/NAR Voluntary Affirmative Marketing Agreement, but none of his former or current agents acknowledged awareness of the agreement.

Conciliation efforts were initially not successful. The case was certified for hearing in December 1996. Respondent elected to have the matter heard in district court. Prior to the filing of the complaint, the parties reached a conciliation and settlement agreement. The terms and conditions of the settlement agreement were:

a) Respondents acknowledged that the firm violated state and federal fair housing laws through its agents' marketing of properties with illegal restrictive covenants prohibiting residency by families with children.

b) Respondents agreed not to discriminate in the future against any person in violation of the fair housing laws.

c) Respondents agreed to utilize the strategies and to implement the affirmative marketing principles set forth in the Voluntary Affirmative Marketing Agreement.

d) Respondents agreed to pay the sum of \$1,500.00 to the Flathead unit of Habitat for Humanity, a nonprofit family housing developer.

e) Respondents agreed to pay the sum of \$1,000.00 to the Human Rights Commission for reimbursement of the deposition costs required during the investigation.

f) Respondents agreed to report regularly for two years to the Human Rights Commission on the firm's actions to fulfill the goals of the affirmative marketing agreement.

As a result of this enforcement action, a routine practice of steering families away from several subdivisions in the Flathead Valley was ended at one of the area's largest real estate firms. The firm and its owner admitted violation of state and federal fair housing laws and can be held to a higher degree of liability in the event of a future violation. The firm was bound to the performance of the strategies set out in the HUD/NAR Voluntary Affirmative Marketing Agreement. A substantial donation was made to a local nonprofit developer of family housing and the Commission was reimbursed for the costs of its investigation.

4. Mobile City Home Park

Mobile City Home Park is a residential trailer park located in Helena and comprised of 237 housing units. In September 1996, two complaints were filed against the owners and operators of the development alleging that respondents segregated families with children to one section of the park, provided less services and amenities to that section, caused publication of discriminatory ads adhering to the segregation practice, and managed the park in a manner to deny persons equal opportunity based on familial status and age. The complaints were brought by a family that

had been instructed to find other housing because two minor children had been added to the household and by the HRC staff based on substantial evidence of a long term policy of unlawful segregation.

Respondents admitted that certain sections of the court were for adults only, but claimed the segregation was approved by local government bodies in the early 1970s. Respondents also claimed the residents themselves agreed to the segregation policies. Respondents provided no legal authority indicating their contentions constituted a bonafide defense.

The parties executed a conciliation and settlement agreement on June 12, 1997. The Human Rights Commission entered a consent order on June 14, 1997. Terms and conditions of the agreement were:

a) Respondents admitted that housing opportunities at Mobile City Home Park were segregated in part on the basis of age or familial status and in violation of fair housing laws during the period through September 30, 1996.

b) Respondents agreed to a consent order by the Commission enjoining any further segregation at the Mobile City Home Park in violation of state or federal fair housing laws or any other fair housing violation.

c) Respondent agreed to publish on three occasions in two local newspapers a one-eighth (1/8) page notice that housing at Mobile City Home Park is available on an equal opportunity basis and stating that "Families are welcome."

d) Respondents agreed to adopt a policy that all advertising performed by respondents, including all classified housing ads and

signage and other marketing materials, will include the statement "Families welcome."

e) Respondents agreed to distribute to all their employees and agents and to all residents of Mobile City Home Park educational materials on fair housing rights and responsibilities.

f) Respondents agreed to pay to the family of the charging party the sum of \$3,000.00 for the harm caused by the violation of their rights.

g) Respondent agreed to pay to the Human Rights Commission the sum of \$2,000.00 in satisfaction of any and all claims for costs, expenses, fees, losses, or other sums incurred by the Commission.

h) Respondent agreed as a showing of good faith to place the sum of \$8,000 in an interest bearing account in a financial institution as a compensation trust fund. The purpose of the fund is to provide security for the payment of all other claims of injury or harm to any other persons, which are filed before September 30, 1998, and are proved to be a result of the violations of state or federal fair housing laws.

As a result of this enforcement action, a discriminatory policy against families with children was ended at a 237-unit housing development in the Helena Valley housing market. The complainant received compensation for the violation of her fair housing rights and a fund was established to compensate parties who may file future claims against respondents. The respondents paid compensation to the Human Rights Commission for the diversion of resources in investigating the complaint. Respondents admitted that segregation was occurring during the specified time period and that it was in violation of federal and state fair housing laws. Respondents also agreed to adopt certain affirmative marketing practices

in favor of families with children and to minimize the likelihood of future violations based on familial status.

5. Sail Maker Realty

Sail Maker Realty was a sole proprietorship of Gem Mercer engaged in realty sales and property management in the Polson area of the Flathead Valley housing market. During the relevant period, respondent owned and/or managed more than 40 residential rental properties.

Three complaints were filed against the respondent and referred to the project for assistance. A fair housing organization brought two of the complaints; an individual who had sought housing from respondent brought the third. The complaints alleged that respondent steered applicants away from certain housing he managed on the basis of familial status and that he also engaged in discrimination against female applicants by making unwanted and unwelcome comments of a sexual nature toward prospective tenants and offering lowered rent and/or deposit payments.

After an extensive investigation into the respondent's historic management practices, the project made significant efforts to conciliate the claims based on the sensitive nature of the allegations in the complaint and the information obtained during the investigation. The parties entered into a settlement agreement in February 1997. The terms and conditions of the settlement agreement were:

a) Respondent agreed to pay the fair housing organization \$1,000.00 in monetary relief.

b) Respondent agreed to pay the individual claimant \$4,000.00 in monetary relief.

c) Respondent agreed to surrender his real estate license to the Montana State Board of Realty Regulation within 90 days of execution of the agreement and agreed not to apply for a license in the future.

d) Respondent agreed to take action to end his involvement in the management of any residential properties as soon as possible by terminating all agreements to manage residential property in which respondent has no ownership interest, to involve a third party to manage all properties owned by respondent, and to cease any direct and personal involvement in the management of any residential rental housing unit. The successor owner of the real estate firm and the manager of respondent's properties were obliged to agree in writing to comply with all applicable fair housing laws.

As a result of this action, families with children and women seeking available housing in Polson/Lake County area faced a significantly lower risk that they will be subject to unlawful discrimination. The individual claimant avoided the stress and difficulties of a extended litigation and received monetary compensation for the harm claimed from the contact with respondent. The fair housing organization received partial reimbursement for the costs it incurred in taking action against the alleged discrimination.

6. Westana Mobile Manor

Westana Mobile Manor is a 40-unit housing development in the Bitterroot Valley, owned by Preston Copps and managed by Helen Penny. Copps and Penny were the named respondents in the case.

Montana Fair Housing, Inc. filed three complaints regarding Westana Park with the Montana Human Rights Commission. The

complaints were filed on behalf of Kirsten Campbell and her children; on behalf of John and Annette Gorton and their son, and on behalf of a female and a male tester. Montana Fair Housing alleged that the respondents had a policy of discriminating against persons because of their familial status by inquiring about familial status of applicants for housing and by stating to applicants that children were not permitted to reside in the park. The Gortons' were residents of Westana Manor who claimed that they were advised they could not sell their trailer to a family with children. The Campbells' applied to buy a home and rent a lot at Westana Manor and claimed they were refused an application on two occasions and were advised if they purchased a mobile home, they would be forced to relocate it because their family included children.

After an extensive investigation of the complaints which included interviews with all of the parties, a final investigative report was issued finding substantial evidence to support the allegations that respondents violated the fair housing rights of the claimants and families with children in general. Admissions were obtained from the respondents that they were in fact attempting to exclude families with children from the development based on an assumption that they could restrict residency to adults only. Respondents also contended that families with children, particularly with female children, were likely to use water at a rate that would exceed the capacity of the development. That contention was based on stereotypes regarding children, especially female children, and their patterns of behavior. Respondents produced no objective or credible evidence in support of their defenses.

The parties reached a settlement agreement in February 1997. The terms and conditions of the agreement were:

a) Respondents admitted that their practice of refusing to rent to families with children was in violation of state and federal fair housing laws.

b) Respondents agreed to cease and desist from engaging in any housing practice in violation of state or federal fair housing laws and agreed not to adopt any housing policy or practice having a disparate impact on families with children.

c) The respondents agreed to pay \$1,600.00 in satisfaction of costs or damages incurred by Montana Fair Housing, \$2,000.00 to Kirsten Campbell, and \$1,600.00 to the Gortons.

d) Respondent agreed to pay \$1,600.00 in civil penalties to the Montana State Treasurer.

e) Respondent agreed to affirmatively market housing at the court to families with children, to display fair housing posters in their offices, and to report quarterly for two years to the Human Rights Commission on the family composition of rented units and on vacancies.

As a result of this enforcement action, a discriminatory policy against families with children was ended at a 40-unit housing development in Ravalli County, Montana. Families who were denied equal housing opportunity by respondents received compensation for the denial of their rights. A fair housing organization received payment for the diversion of its resources and time in efforts to counteract the discriminatory policy. The state received payment of a civil penalty earmarked for fair housing enforcement and education activities. The respondents admitted violations of state and federal law and can be held to a higher degree of accountability for any future violations. Respondents also agreed to perform a number of tasks to minimize the likelihood of future violations.

7. MSU-Bozeman/Family Housing

Montana State University - Bozeman is a state university which makes available housing at its family housing complex to students, faculty, and their families. Three complaints were filed against the university alleging discrimination based on familial status and marital status at the family housing units. The complaints were filed by two students on behalf of themselves and their children and by a fair housing organization. The eligibility criteria of MSU's housing units for family housing units discriminated against persons because of specific family composition. The fair housing organization complaint alleged use of unreasonably restrictive occupancy standards that limited residency by families based on specific numbers of children per bedroom. The student complaints alleged denial of housing opportunities based on definition of families.

The complaints were investigated and referred to the project for prosecution of the claims at an administrative hearing. In the course of the investigation, respondent admitted that the university had an occupancy standard based on the number of persons and the number of bedrooms. MSU contended it was necessary based on a family housing shortage in the market. The final investigative report found sufficient evidence to conclude discrimination had occurred because of familial status. The report stated that the occupancy standard was likely to have a disparate impact on families with children. Respondent also admitted having an occupancy standard based on the definition of family which permitted exclusion of families based on marital status. Regarding the family definition, the investigator also found reasonable cause to believe a violation of state fair housing laws occurred.

Prior to discovery and hearing, a conciliation and settlement agreement was reached by the

parties. The terms and conditions of the settlement were:

- a) The parties acknowledged that MSU revised its "Family Status" eligibility criteria and occupancy to eliminate the provisions found to be in violation of state or federal fair housing laws.
- b) Respondent agreed that MSU will not discriminate in the future against any person in violation of the fair housing laws.
- c) Respondent agreed to pay to the student claimants \$9,900.00 for the benefit of their children as monetary relief.
- d) Respondent agreed that if MSU revises the "Family Status" eligibility criteria or occupancy standards imposed upon applicants and occupants of family housing, the Commissioner of Higher Education will submit a copy to the Human Rights Commission for review and comment prior to adopting or implementing the policy change.
- e) The complaint of the fair housing organization was resolved on the basis of the affirmative relief described above.

8. Pines Mobile Homes

Pines Mobile Homes is a 14-unit mobile home development located in the Ronan area of the Flathead Valley. Harley and Ann Sullivan own and manage the development.

Two complaints were filed by a fair housing organization alleging that respondents advertised, on several occasions, available rental units stating "No Children" and that respondents denied housing to applicants on the basis of familial status, race, and national origin.

Based on the investigation of the complaint, it was determined that in addition to advertising preferences against families with children, the respondents made repeated statements to persons inquiring about availability, asking if they were tribal members and indicating a preference against members of the Confederated Salish-Kootenai tribes. Interviews also indicated that tribal members who inquired about housing at the site were treated adversely, misinformed about availabilities, and otherwise discouraged from applying. The properties are within the boundaries of the Flathead reservation.

The final investigative report found sufficient evidence to conclude that discrimination had occurred in the placement of the advertisement and in the treatment of applicants based on tribal membership. The cases were consolidated and certified for hearing in December 1996. The cases were assigned for litigation by the project due to the original familial status complaint and the location of the housing units.

After initial discovery and prior to deposition of the respondents, the parties reached a conciliation agreement. The terms and conditions of the agreement were:

- a) Respondents agreed to entry of an order by the Human Rights Commission finding that respondents did not provide equal housing opportunities to persons at the Pines Mobile Home Court in Ronan, Montana, because of familial status and national origin.
- b) Respondents agreed not to violate state or federal fair housing laws in the future.
- c) Respondents agreed that in the event either or both of the respondents are found in the future to violate state or federal fair housing laws after the execution of this agreement, respondents will be prohibited from engaging

in the management or operation of any residential housing units in the state of Montana.

d) Respondents agreed to pay MFH \$2,500.00 for the diversion of its time and resources caused by the violations of the fair housing laws.

As a result of this enforcement action, respondents' practice of excluding families with children and tribal members was ended at their housing development in Ronan. The complainant received payment for the diversion of its resources and time in efforts to counteract the discriminatory policy. Respondents agreed to comply with fair housing laws or end their involvement in the housing market. Respondents admitted violation of the fair housing laws and may be held to a higher level of accountability in the event of any future violations.

9. Ron's Mobile Homes, Inc.

Ron's Mobile Homes, Inc., was a mobile home dealership and broker doing business in both the Bitterroot and the Flathead Valley housing markets. Ron Erickson was owner and operator of the dealership.

On December 20, 1996 Montana Fair Housing, Inc., filed the complaint with the Montana Human Rights Commission. The case was assigned to the Fair Housing Enforcement Project based on the type of discrimination alleged and the location of the housing. Montana Fair Housing brought the complaint on its own behalf and on behalf of families with children, including persons who are members of Montana Fair Housing, who were denied housing opportunities by the respondent. Montana Fair Housing alleged that the respondent caused to be made, printed and published classified housing ads which were discriminatory, which indicated a

preference and were illegal. The complainant also alleged that respondent did not sell or otherwise make available housing accommodations located in adult parks or adult courts on an equal opportunity basis to prospective purchasers who are families with children.

In the course of the investigation, the project obtained direct evidence of the respondent's advertising violations and admissions from the respondent that the ads were intended to exclude children from the mobile home courts where the housing was located, at the direction of the owners of those developments or individual housing units. Based on the direct evidence, the project made early efforts to conciliate the case. The parties reached a settlement in January 1997.

The terms and conditions of the settlement agreement were:

a) Respondent admitted that his practice of advertising and using the terms "adult court," "adult park," and "retirement court" were in violation of state and federal fair housing laws.

b) Respondent agreed not to cause to be published any classified housing ads in the future which state a discriminatory preference against families with children or are otherwise in violation of the state or federal fair housing laws.

c) Respondent agreed to publish a 2" X 4" public service notice stating his support of equal housing opportunities in the classified advertising section of a newspaper distributed generally in the Bitterroot Valley housing market.

d) Respondent agreed to appear and answer questions at an audiotaped deposition concerning the placement of the ads, the

location and the circumstances of the housing opportunities described in those ads, and his knowledge or awareness of housing opportunities in the Bitterroot Valley housing markets which are not made available to families with children on an equal basis.

e) Respondent agreed to pay to the charging party the sum of \$200.00 as compensatory relief.

As a result of this enforcement action, discriminatory advertising and sales practices by a major mobile home dealer in the Bitterroot Valley were ended. Respondent admitted the violation and can be held to a higher standard of accountability in the event of a future fair housing violation. Charging party was partially reimbursed for the diversion of its resources and time in protecting the equal housing rights of its members and associates. Respondent provided information identifying the location of housing developments known to exclude or limit children from housing opportunities. Respondent also published an ad supporting fair housing in his community, including the equal housing rights of families with children.

10. Alpha Arms

Alpha Arms and related housing complexes are located in Missoula, Montana, comprising more than 100 housing units. Owner of the housing units is Clayton Devoe.

Complaints concerning the Alpha Arms were filed by a fair housing organization alleging advertising and steering practices which denied families with children equal housing opportunities. The project team became involved in the case after a finding of reasonable cause, election by the respondent to a civil court action, filing of a civil complaint, and extensive discovery. In the investigation of the case, the project assistant

located more than 20 ads published by respondent stating that the subject housing had a "currently elderly clientele." In addition, evidence was obtained from former managers that the respondent had specifically informed them not to rent to families with children. An analysis of the age and family composition of the subject housing indicated that the families without children were disproportionate, and also that the residents did not all qualify as a "currently elderly clientele."

The defendant sought summary judgment in his favor claiming the fair housing organization did not have standing to bring the complaint and that the HRC therefore did not have standing to file a civil action on its behalf. The matter was fully briefed and submitted for decision in June 1997. On July 9, 1997, the state district court issued its order denying the motion for summary and upholding the standing of the fair housing organization and the substantial equivalency between state and federal fair housing laws. The decision represents the first reported case in Montana on both issues.

The case remains in litigation, assigned to HRC counsel. The parties are currently in settlement negotiations. If those discussions are not successful, a summary judgment motion is expected asserting that the advertising in question is direct evidence of unlawful steering and a fair housing advertising violation.

PART III.

COMMUNITY OUTREACH AND FAIR HOUSING EDUCATION

Summary

INTEGRATED EDUCATION AND ENFORCEMENT

The project conducted educational efforts to inform members of the general public of their rights and responsibilities under fair housing laws. The focus of the education and outreach activities, like the Fair Housing Enforcement Project generally, was the equal housing rights of families with children. The primary outreach strategy was an integrated, multi-media approach to fair housing education. The project determined priorities in terms of the available media and the message to be delivered in conjunction with its research and investigative activities.

Although the original project design assumed that subdivision and zoning activities would be a primary source of barriers to equal housing, initial investigations into the target housing markets demonstrated that discriminatory practices were obvious and routine. See Part I., Section B.3., above. The project staff did not concentrate on the back room technicalities of subdivision applications or local zoning rules when newspapers and multiple listing services in the target areas accepted and printed explicit "adult only" messages, when property managers openly explained that families were segregated to specific and less desirable areas in a development, or when landlord rules and regulations or subdivision covenants specified age restrictions that were patently illegal.

In those circumstances, the project set as its objective providing both consumers and providers with a basic lesson in fair housing laws and a clear message -- that housing discrimination against families with children is illegal except under the most limited circumstances.

Understanding the need to convey that message in as many forms and as many forums as possible, the project used five different media to reach the general public: fair housing seminars, newspapers and print publications, radio public service announcements, an informational poster and brochures. Part of those efforts focused on outreach done by traditional voluntary participation, as a public service by newspapers or radio stations to their readers and listeners, as a membership service by private organizations, and as general information service by a state agency.

In a more direct approach, the project linked its enforcement activities directly with a number of educational activities. In settlement and conciliation agreements with respondents who acknowledged past violations of the fair housing laws, the project included provisions requiring publication of a series of fair housing public service articles or an individual announcement of support for equal housing for families with children in their local community. In either instance, the goal was to counteract past discriminatory messages and establish a record of

respondent's stated commitment to compliance with the law.

A. Coordination of Outreach and Education

The project investigator took responsibility for coordination of the educational campaign, under the review of the project counsel and with support from the project assistant. A volunteer intern from Carroll College, Ryan Rusche, helped produce and distribute the audio PSAs and the fair housing brochure and pamphlet. Graphic artist Gene Pasini of the state Department of Administration, Publications and Graphics Division, provided technical services in the design and production of the poster and pamphlet. The FHEP project counsel conducted the fair housing training seminars, except on occasions when schedules conflicted. The alternate presenter was HRC attorney and hearing examiner, Terry Spear.

During its early stages, the project collected an assortment of general education resources and produced a number of original materials. Resources included information on fair housing rights and responsibilities, mailing lists, rosters of publishers and broadcasters, and other sources of contacts with housing consumers and providers in the target areas. Coordination of education activities involved making arrangements for training seminars, duplicating training materials, writing and distributing newspaper articles, assisting the intern with production and distribution of the PSAs to various radio stations, overseeing various graphic designs, and composing the text and general design for the poster and accompanying pamphlet. The project also recruited newspaper publishers and broadcasters to participate in the fair housing education efforts on a *pro bono* basis.

Due to budget constraints, education material (audio and print) could not be placed in the selected media at the direction of the project, but depended upon donated space or air time. Distribution of public service articles and audio announcements depended on the discretion of the participating publishers and broadcasters. Without a distribution plan designed for maximum impact, evaluation of the market effect of the voluntary distribution of public service articles and announcements was not possible with any accuracy and was likely limited in its effect on the target markets.

Integration of the fair housing education into the project enforcement actions lessened the limitations of the voluntary aspects of the community outreach efforts. In a departure from traditional HRC conciliation agreements, the project focused on providing a message of nondiscrimination to housing consumers rather than requirements of future training of the respondents. The project determined that change in emphasis based on a conclusion that the enforcement process itself had provided substantial education for those violating the law and that the remedial resources should be directed instead to those persons whose rights were violated.

In nearly all settlements, respondents agreed to demonstrate their commitment to equal housing rights and did so through the publication of public service articles or individual announcements supporting fair housing. The message that equal housing opportunities are guaranteed to everyone, including families with children, served as a counterpoint in the same forum to the prior discriminatory statements.

Given the role played by those respondents in providing information about housing availability in the target housing markets, particularly the network of newspapers and speciality publications involved in classified housing advertising, the project succeeded in leveraging its resources to have a substantial impact in providing critically needed fair housing information to the public at large. See Part II, Section B.2, "Distribution of Fair Housing Public Service Articles -- Conciliation Agreements," above.

B. Fair Housing Seminars

The project legal counsel, Tim Kelly, and the HRC Hearings Examiner, Terry Spear, developed or adapted training materials on fair housing rights and responsibilities for the project and made in-person training presentations to private and public organizations. Their training involved an explanation of state and federal fair housing laws, housing litigation practices, and professional and ethical responsibilities of housing providers. Summary descriptions of the individual training seminars and other public training sessions are provided below.

April 2, 1996 (Helena, Montana). Tim Kelly, FHEP Project Counsel, and Leonard Lanfranco, Ph.D., former Executive Director of the Oregon Newspaper Publishers Association, presented a seminar on "Fair Housing Advertising" to the Helena Association of Realtors. Approximately 100 individuals attended the seminar. The project staff distributed materials and handouts from the HRC Fair Housing Training Manual, including excerpts from relevant cases, plus a fair housing advertising test and case studies with answer sheets. The Board of Realty

Regulation approved the seminar for three continuing education credits.

April 16, 1996 (Kalispell, Montana). The project provided the Fairway Boulevard Homeowners Association, Inc., with the HUD Brochure, "If You Can Open This Door," HRC fair housing brochures, and a written discussion of fair housing rights based on the conditions at the subdivision. Approximately 60 individuals received the information. In addition, the project provided residents with additional information on homeowner rights and responsibilities under fair housing laws.

May 2, 1996 (Livingston, Montana). Tim Kelly presented a three-hour seminar on Fair Housing Advertising, Rights and Responsibilities to the public. Approximately 12 individuals attended the seminar. The project staff distributed materials and handouts from the HRC Fair Housing Training Manual. Four of the attendees were required to attend to satisfy a court-ordered settlement in a local fair housing case. See Robert B. v. Montana Pioneer, et al., Consent Order, (U.S. D.C., Billings, Montana 1996).

May 17, 1996 (Billings, Montana). Tim Kelly presented a seminar on Fair Housing Rights and Responsibilities to the Yellowstone County Association of Realtors. Approximately 80 individuals attended the seminar. The materials and handouts used were NAR materials, ("Fair Housing In The 90's,") as well as materials from the HRC Fair Housing Training Manual. The Board of Realty Regulation approved the seminar for three continuing education credits.

July 9, 1996 (Missoula, Montana). Tim Kelly presented a seminar on Techniques in Examining and Defending Witnesses at

Depositions under the Rules of Civil Procedure to the Commission staff and investigators. Materials and handouts included two ALI-ABA training videotapes and written outlines prepared specially for the presentation. Twenty individuals attended the presentation.

December 5, 1996 (Billings, Montana). Tim Kelly presented a 2 ½-hour seminar on Fair Housing Rights and Responsibilities to the Billings Landlords and Property Managers Association. The presentation used materials and handouts drawn from the HRC Fair Housing Training Manual. Approximately 40 individuals attended the seminar. The Board of Realty Regulation has approved the session for three continuing education credits.

December 6, 1996 (Billings, Montana). Tim Kelly presented a 4-hour seminar on Fair Housing Rights and Responsibilities to the Yellowstone County Association of Realtors. The presentation used materials and handouts drawn from the HRC Fair Housing Training Manual. Approximately 120 individuals attended the seminar. The Board of Realty Regulation approved the seminar for three continuing education credits.

March 10, 1997 (Havre, Montana). Terry Spear presented a seminar entitled "Compliance With the Human Rights Act Is Good Business," to the Hill County Landlords Association. The presentation used the test yourself handout, fair housing advertising test, case studies, and accompanying answers from the HRC Fair Housing Training Manual. Approximately 30 individuals attended the seminar. The sponsor did not obtain education credits.

April 17-18, 1997 (Lewistown, Montana). Tim Kelly and Chris Brancart, a California attorney specializing in fair housing cases, presented a seminar in fair housing advertising and fair housing litigation at a seminar sponsored by Montana Fair Housing. The presentations used materials and handouts drawn from the HRC Fair Housing Training Manual, as well as original materials prepared for the two day seminar. Approximately 80 lawyers, realtors, managers, consumer advocates, fair housing advocates, and others attended the seminar. The Board of Realty Regulation and the State Bar approved the seminar for nine continuing education credits.

April 24, 1997 (Billings, Montana). Terry Spear presented "Compliance With the Human Rights Act Is Good Business" to the Billings Community Resource Board (CHRB). The presentation used the Test Yourself on Housing Applications exercise, Fair Housing Laws, Equal Housing Opportunities For People With Disabilities, Case Studies, a Brief Summary of Senate Bill 350 and accompanying test answers. Approximately ten individuals attended the seminar. It was unknown if the sponsor obtained education credit for the session.

April 25, 1997 (Billings, Montana). Terry Spear and Linda Henry, a fair housing consultant, presented a seminar, entitled "A Fair Housing Training Session," to the Billings Community Housing Resource Board, the Billings Association of Realtors, and the Billings Gazette. The presentation used the "Fair Housing is Good Business" materials and handouts and a detailed summary of Senate Bill 350. Approximately 150 individuals attended the seminar. The Board of Realty Regulation approved the seminar for three continuing education credits.

C. Public Service Articles

The project identified daily newspapers and weekly publications as the highest priority media for reaching persons, both housing consumers and providers, actively involved in target area housing markets. Two methods were used to arrange publication of fair housing information in newspapers around the state: (1) a voluntary agreement with newspapers in each of the target areas as a public service, and (2) a stipulated agreement as part of conciliation of claims filed against a newspaper for discriminatory advertising, with the settling party agreeing to publish the series of articles as a remedy for past discrimination and as affirmative relief designed to minimize future violations.

Project staff produced the series of public service articles on fair housing for distribution. The articles were approximately one-quarter page in length, for publication once a month for six consecutive months. The project requested placement on the same pages as the classified advertising section of the newspapers. Staff forwarded the articles to publishers by the 10th of each month for publication by the end of the month. The title of each article is listed below, with dates of earliest publication indicated.

- (1) "Fair Housing Laws - Protecting a Free Housing Market, an Open Community and Individual Rights." (January 1997)
- (2) "Equal Housing Opportunity - Who's Protected by the Fair Housing Laws? You are. We all are." (February 1997)

- (3) "Guidance Regarding Fair Housing Advertising." (March 1997)
- (4) "Equal Housing Opportunities For Persons With Disabilities." (April 1997)
- (5) "Equal Housing Rights of Families With Children. Fair Housing Opportunities for Families is Good Public Policy and Good Business." (May 1997)
- (6) "What qualifies as Housing for Older Persons?" (June 1997)

See Appendix, HRC Fair Housing Project, Public Service Articles Series.

Project staff identified a total of 24 newspapers located in the project target areas. Three newspapers were published in the Helena Valley: *The Helena Independent Record*, *The Adit*, and *the Boulder Monitor*. Eight newspapers were published in Gallatin County: *The Bozeman Daily Chronicle*, *Three Forks Herald*, *West Yellowstone News*, *Whitehall Ledger*, *Lone Peak Lookout*, *Mini-Nickle*, *Thrifty-Nickel*, and *Belgrade High Country Independent Press*. Seven newspapers were published in Missoula and the Bitterroot Valley area: *The Missoulian*, *Missoula Independent*, *Ravalli Republic*, *Bitterroot View*, *Sanders County Ledger*, *Mineral Independent*, and *The Western Montana Messenger*. Six newspapers were published in the Flathead: *The Daily Interlake*, *Whitefish Pilot*, *Hungry Horse News*, *CharKoosta News*, *Bigfork Eagle*, and *the Lake County Leader*.

The staff developed a contact list identifying the name, publisher, and owner for each of the

newspapers. The outreach coordinator directed a letter to each of the newspapers requesting their participation in the project educational campaign through publishing: (1) general information about the policies behind fair housing laws, (2) issues dealing with discrimination against families with children,

(3) an explanation of housing for older persons, (4) a short description of procedures in filing or defending against a complaint, (5) tips for preventing discrimination in advertising, and (6) an explanation on what people can do to promote fair housing in their community.

Table No. 12
DISTRIBUTION OF FAIR HOUSING PUBLIC SERVICE ARTICLES
 Publications Agreeing to Publish as a Public Service Announcement
 by Name, Location and Circulation

NEWSPAPER/PUBLICATION	PRIMARY DISTRIBUTION LOCATIONS	CIRCULATION
<i>Daily Interlake</i>	Primary distribution in Kalispell, Columbia Falls and Whitefish. (Flathead County)	17,447
<i>Charkoosta News</i>	Primary distribution in Pablo, Montana. (Lake County).	3,935
<i>Bigfork Eagle</i>	Primary distribution in Bigfork and Swan Lake surrounding area. (Flathead County)	1,950
<i>Lake County Leader</i>	Primary distribution in Polson, Ronan, Pablo, St. Ignatius and Charlo, Montana. (Lake County)	4,943
<i>Ravalli Republic</i>	Primary distribution in Hamilton, Stevensville, Corvallis, Victor, Darby, Montana. (Ravalli County)	5,285
<i>Sanders County Ledger</i>	Primary distribution in Thompson Falls, Plains, Noxon, Heron, Trout Creek and Hot Springs, Montana. (Sanders County)	2,647
<i>Mineral Independent</i>	Primary distribution in Superior, St. Regis, DeBorgia, Alberton, Haugen and Saltese, Montana. (Mineral County)	1,000
<i>Bozeman Daily Chronicle</i>	Primary distribution in Bozeman, Belgrade, Manhattan, Three Forks, West Yellowstone and Ennis, Montana. (Gallatin County)	15,603
<i>Belgrade High Country Independent Press</i>	Primary distribution in Belgrade, Manhattan, Bozeman, Churchill and Amsterdam, Montana. (Gallatin County)	2,900
TOTAL		55,710

As a follow-up, the staff contacted publishers or owners by telephone to request their participation and obtain their commitment in publishing the series as a public service. The project designed the articles to educate readers and assist them in understanding state and federal discrimination laws, with a general description of how communities can be adversely affected by housing discrimination and improved with general adherence to fair housing policies.

Of the 24 newspapers contacted, nine agreed to publish the articles as a service to their readers and their communities. The nine newspapers which agreed to publish the articles are identified below by name, type, day of publication, circulation, and location by county in Table No. 12 on the following page.

Assuming all nine newspapers that agreed to participate in the educational campaign published each of the articles as delivered by the project team, the series should have been circulated to a readership of over 55,000 persons in only three of the four target areas.

D. Audio Public Service Announcements (Radio PSAs)

The project used a similar approach to provide fair housing information to the public through radio public service announcements, using both pre-produced national fair housing audio products and original PSAs produced by the project.

Project staff contacted the Fair Housing Clearinghouse to obtain examples of radio public service announcements regarding fair housing rights and responsibilities. The Clearinghouse sent tapes with twelve

examples of PSAs which had been approved and used on a national level. The Clearinghouse encouraged use of the recordings in local communities with reference to local civil rights agencies. The prerecorded messages were entitled: "Didn't Take That Long," "Fair Offer," "We Don't See Homes," "They Didn't Renew," "No Children," "Excuses," "We Don't Make Loans," "What Color Is Your Money?", "Great Old House," and short announcements promoting fair housing by Ruby Dee, Ed Asner, and Mary Chapin Carpenter.

In addition to those pre-produced educational messages, the project created four original recordings with the assistance of the public media department at Carroll College. In all, the final project PSA cassette tape included sixteen recorded announcements promoting fair housing and available for broadcast. All provided either the national toll-free number for contacting the fair housing offices of the U.S. Department of Housing and Urban Development or the state toll-free number for contacting the offices of the Human Rights Commission. The selections ranged from 20 seconds to one minute in length, with a majority 30 seconds in duration.

The volunteer intern, project investigator, and project assistant conducted research and contacted each of the radio stations in the project target area. The research identified a total of 15 radio stations located in the target areas. All 15 stations agreed to broadcast the public service announcements. Four radio stations were located in the Helena Valley listening area: KBLL AM-FM, KCAP AM, KMTX FM, and KICKER FM. Five radio stations broadcast to the Bitterroot Valley: KUFM, KYLT, KGGL, KGVO, and KLYQ. An additional four in the Flathead Valley:

KALS FM, KQRK AM (KERR), KGEZ, and KOFI. Two radio stations broadcast to the Gallatin Valley: KMMS FM and KBMG AM.

The education coordinator developed a contact list identifying the name of the radio station, program director or owner, and address. The staff forwarded to the stations a copy of the tape, with accompanying written text. The project intern then made an additional direct contact to confirm the stations would play the PSAs from the cassette tape. All of the radio stations agreed, but reserved the right to choose from the menu of available messages and select the times for airplay based on availability. As with the publication of the newspaper public service articles, no mechanism was available to monitor and confirm broadcast of the PSAs at any of the participating radio stations, since broadcast times were within the sole discretion of the stations.

E. Familial Status Poster

The project designed and produced a fair housing poster specifically geared toward families with children. After canvassing the Human Rights Commission staff and reviewing historic familial status cases filed with the agency, the project staff decided to address two different concerns: the prevalence of fairly narrow and restrictive definitions of "family" when considering who should be protected by the fair housing laws and the need for a clear and unambiguous statement of the law requiring equal housing opportunities for families with children. The project based the decision on responses indicating a bias against certain nontraditional family households (single parent, multi-social, multi-generational, extended families, etc.) and

indications of some discomfort with racial or religious or national origin diversity in the same families. The project survey of Montanans' attitudes, see Part I., Section C.5., above, corroborated the primacy of those concerns.

The project sought to stress a message that "all families with children, regardless of their individual makeup, are guaranteed equal housing opportunity." In line with that theme, the staff developed the text and graphics to emphasize that, regardless of individual family composition, public policy and the fair housing laws protect every family's right to be free from unlawful discrimination in their housing choices based solely on the presence of children in the household.

The project designed and printed 250 posters and distributed them throughout the project target area. The staff developed and used its own mailing list of private businesses, housing organizations, educational facilities, state agencies, and public service providers likely to be in contact with families with children residing in the target areas. See Appendix, FHEP Fair Housing Poster, and FHEP Poster Distribution List.

Among the state agencies receiving the educational material were: colleges and universities, Job Service Offices throughout the state, offices of the state's Drivers License and Motor Vehicle Division, public libraries and the state Historical Society.

A variety of social service organizations received the educational materials: food banks, family crisis centers, homeless shelters, human resource development councils, domestic abuse shelters, and day care facilities.

Organizations in regular contact with housing consumers who received the educational materials were: the Human Rights Network, Montana Association of Realtors, Citizens' Advocate Office, Montana Advocacy Program/Disability Law Clinic, the Northwest Montana Association of Realtors, fair housing advocacy groups, local housing authorities, nonprofit developers of family housing, and tribal, social, or legal service offices.

A few of the local agencies who received educational materials were: county health departments (Immunizations and WIC Program), public assistance offices, the Commerce Department (State Board of Realty Regulation), and divisions within the Department of Public Health and Human Services (Child and Family Services, Child Support Enforcement, Medicaid and Disability Services Division).

Finally, obstetricians, gynecologists, pediatricians, family planning clinics, and Planned Parenthood offices were provided educational material.

F. Fair Housing Informational Pamphlet

The project also produced a short pamphlet on the equal housing rights of families with children. The project staff designed and composed the text of the pamphlet drawing much of the information from current HUD produced or sponsored educational materials. The pamphlet, entitled "Denying Housing to Families with Children is against the Law," provided a brief overview of federal and state fair housing laws, emphasizing the application to families with children. See Appendix, FHEP Informational Pamphlet.

The pamphlet explained who the law protects, who the other protected classes are, and how generally to recognize discriminatory housing practices. The pamphlet emphasized that although there is often clear and unmistakable evidence of housing discrimination against families ("adult only" rules or advertising or segregation in clearly marked areas), there are also subtle and hidden forms of familial status discrimination (quoting higher rents, denying housing is available, imposing greater fees or surcharge, providing less services or amenities).

In addition to providing examples and information concerning housing discrimination against families with children, the pamphlet incorporated two practical themes within the text of the brochure. The first theme was: When applying and qualifying for housing, the most important factor is economic qualifications (credit history, references, demonstrated ability to meet the terms and conditions of the tenancy or sale agreement). The second theme directed at families was: "If you have children, or are planning to have a family, you have a guaranteed right to equal access to housing opportunities. You cannot be denied housing simply because you have children, except in very limited circumstances where the law recognizes an exemption."

The staff distributed the poster and pamphlet together, to the same mailing list previously referenced for the FHEP fair housing poster.

PART IV.

CONCLUSIONS AND RECOMMENDATIONS

Summary

Based on the research conducted, the results of investigations and enforcement actions, and the interactions during the community outreach and education activities, the project finds that there is substantial evidence to support the following conclusions and recommendations regarding current fair housing issues and patterns of housing discrimination against families with children in the state of Montana.

A. Nearly all Montanans strongly support the principle of equal housing opportunity for all citizens, including families with children.

One of the most encouraging discoveries during the Fair Housing Enforcement Project was that Montanans by large majorities express support for the principle of equal housing rights for families with children and other protected classes. Respondents to the statewide survey conducted for the project by the MSU/UM research team stated, by an average margin of nearly three to one, that human rights laws protecting families with children were fair and necessary protections.

This finding is consistent with the nationally recognized importance of equal housing rights expressed in the original Fair Housing Act of 1968 and restated in the Amendments of 1988, that "[i]t is the policy of the United States...to provide for fair housing throughout the United States." 42 USC §3601. See also: Trafficante

v. Metropolitan Life Ins., 409 U.S. 205 (1972), requiring in a unanimous decision a "generous construction" of the Fair Housing Act in order to carry out a "policy that Congress considered to be of the highest priority." Accord, among others, Resident Advisory Bd. v. Rizzo, 564 F.2d 126, 147 (3d Cir. 1977), cert. denied, 435 U.S. 908 (1978).

The finding is also consistent with the conclusions of the Governor's Advisory Council on Housing Discrimination reached more than five years ago. In its most succinct endorsement of the state's policy of fair housing, the Council quoted from a 1989 editorial of the *Great Falls Tribune*:

"Decent housing is a requisite for the dignity, well-being and family needs of all citizens. To deny any persons the opportunity, by erecting barriers that discourage people from receiving fair treatment, is flat out wrong. It's also flat out illegal. The situation requires continued monitoring and, if necessary, legal action to enforce the basic rights of all citizens."

Equal Housing Opportunity in Montana?
Final Report of the Montana Advisory Council on Housing Discrimination (January 1992), p. 19.

Recommendation: In order to encourage and strengthen the support for the national and state policy of equal housing opportunities now embraced by most Montana residents, the project recommends that public officials, at

every level of government, affirm publicly their own commitment to that policy and its implementation, by specific action, in the communities throughout the state.

B. Housing discrimination against families with children is a routine and prevalent practice in Montana.

In contrast to the finding that a large majority of Montanans strongly support the principle of free and open housing markets, the project confirmed once again the prevalence of illegal discrimination in Montana housing markets. The routine nature of discriminatory practices, particularly against Native American residents and families with children in the state, was observed years ago by Governor Stan Stephen's Advisory Council on Housing Discrimination.

"The Advisory Council found that many discriminatory practices exist throughout Montana's housing market. While there is discrimination affecting every group protected by law, it occurs more often against Native Americans and families with children. This discrimination is often blatant and without subtlety, but subtle discrimination is also widespread. Many Montanans are affected on a daily basis, and the effect can be devastating to an individual, and corrosive to a community, and to the state."

Equal Housing Opportunity in Montana?
Final Report of the Montana Advisory Council on Housing Discrimination (January 1992), p. 38.

At each step of the independent research conducted for the project, in the interviews with key persons, in most of the focus groups, and in the statewide survey, this same fact was

confirmed. The project research into discriminatory patterns in the target market areas and its case investigations and enforcement actions provided further corroboration. Continued investment of public or private resources to determine whether illegal housing discrimination is a significant problem in Montana is a misdirection of scarce assets. There are more important questions to be addressed about the nature and custom of discrimination in an environment of broad rhetorical support for fair housing and about effective education and enforcement strategies, if the public or private sector seriously intends to move toward the reality of equal housing opportunity.

Recommendations: State agencies and private sector organizations with obligations to affirmatively further fair housing should pursue further the research initiated by the MSU/UM research team for the Fair Housing Enforcement Project, including specific analysis of the attitudes and market factors (profit potentials, perceptions of lax enforcement, perceptions of customer preference, historic stereotypes, etc.) which motivate housing providers and housing service providers alike to violate the law and disregard the equal housing rights of families with children and others. Resources should also be allocated to the identification of enforcement strategies which have served other jurisdictions to deter persons engaged in illegal discrimination and an analysis of how those strategies can be adapted to conditions in Montana.

C. Many cases of familial status discrimination also include substantial evidence of unlawful discrimination against persons based on race, national origin, sex, marital status, age and against other protected classes.

In its investigation and enforcement activities, the project often found substantial evidence of a link between discrimination against families with children and discriminatory attitudes or practices directed at other protected classes. In one of the subdivision cases, the primary defendant, a long-time developer in the Flathead Valley, expressed disdain for the enforcement efforts of the Commission and complained personally to one of the Commission members that enforcement action was unwarranted because residents at the subdivision had included families with children, Indians, and other minorities, "just no niggers."

In another Flathead Valley enforcement action, investigation of the administrative complaint produced admissions that the agent managing the subject rental property had discouraged families with children from the property. The investigation also produced substantial evidence of the agent's pattern of harassing women applicants and residents, making sexual requests of them, and offering reduced rental rates in exchange for sexual favors.

In a Bitterroot/Missoula case involving the owner of scores of units in the rental market, direct evidence was obtained that the defendant had a long practice of advertising in a manner which discouraged families with children from applying. Former managers employed by the defendant provided sworn statements confirming that the advertising was

part of an intentional policy to exclude families from the housing. The former managers included in their sworn statements that the defendant had told them on their first day of work it was also basic policy not to rent to "spics, Indians, or niggers."

In another Bitterroot case, the manager of a 40-unit development with an admitted operating plan to remove families with children and create an "adults only" environment, explained the business rationale for the changes as an effort to reduce the number of female children, who are known to use excessive amounts of water and tax the capacities of the sewer system.

In the Gallatin Valley, one of the few fair housing advertising cases prosecuted in a Montana court resulted in a consent order entering judgment against the defendants and finding that a local newspaper had advertised its customers' preferences against families with children applying for or considering a wide variety of housing units in the area. Additionally, order found that the defendants had also advertised and promoted exclusionary practices based on affiliation with a particular religious establishment, gender, marital status and disability. Robert B., on his own behalf and on behalf of his minor child, v. Montana Pioneer, et al., Case #95CV105BLG-JDS (U.S.D.Ct. Billings), Consent Order entered March 1996.

The project's collection of information about housing availability in the select markets produced included regular advertising by housing providers who expressed preferences against households with children as well as explicit preferences based on age, marital status, gender, and possibly disability, e.g., for "seniors," "singles," "females," "single

working person,” “retired ladies,” and “males.”

Overall, a substantial amount of anecdotal evidence supported a conclusion that housing providers and their associates who are willing to engage in illegal discrimination against children are also among those more willing to indulge their personal prejudices or stereotypes about other protected classes as well.

Recommendation: Where there is substantial evidence of discrimination against families with children, persons involved in investigating or enforcing the fair housing laws should determine if there is also evidence of discrimination against other protected classes. If necessary, testing and other investigative techniques should be used. If there are indications of such a pattern, requests for relief should reflect those concerns and emphasize the need for strict monitoring of the respondent or defendant in the future conduct of their business. If the defendant or respondent is engaged in licensed real estate activities, then corresponding regulatory action should be taken, conditioning any continued licensing on strict compliance with state and federal law.

D. Large volume housing providers and professional service providers who engage in unlawful discrimination have a more significant adverse impact on Montana housing markets than small volume, independent housing providers, i.e., the “mom and pop” operations.

Efforts to analyze the nature and scope of the problem of housing discrimination in the state have long focused on the assumption that small, independent providers of rental housing

pose the most significant obstacle to free and open markets. The evidence obtained in the course of the Fair Housing Enforcement Project did not support that theory. Although more individual complaints may be directed at small volume owners, that appears to be more a result of the total number of such owners and the segment of the consumer market that they serve. The evidence from the project indicated that high volume housing providers and professional service providers who engaged in discrimination had a more significant disruptive effect on the operation of a free and open housing market.

In gross numbers, persons who own and manage a small number of rental units probably are responsible for a larger number of complaints than most other housing providers. Based on the investigation and enforcement experiences in the project, that fact is likely attributable to the total number of such providers, the percentage of the housing stock that they control, the lack of direct regulation of that segment of the market, the customer base they serve, and the lack of uniform business practices and selection criteria used by those providers. Given the volume of such transactions alone, it is not unreasonable to expect a fair number of complaints alleging housing discrimination from that end of the market. It is an entirely separate question whether those providers represent the most significant barrier to equal housing opportunity.

Data obtained in the project support a different conclusion. In terms of impact on the market overall, large volume providers engaged in discriminatory practices created much higher barriers to equal housing opportunity than the total number of small providers engaged in similar practices

combined. A single subdivision in the Flathead Valley or a single housing complex in the Bitterroot or a single trailer park in the Helena Valley each represented over 200 housing opportunities under the control of a single person or enterprise. Excluding or segregating families with children in those circumstances had an adverse impact on the market equivalent to a discriminatory policy followed by 50 small, independent owners who managed four or less units.

In its history, the Human Rights Commission has not had more than 80 housing discrimination complaints of all types filed in any one year. The combined total of complaints against small owners is unlikely to have had nearly the effect that a single complaint against a large volume housing provider can have in terms of increasing equal housing opportunities. During the FHEP project term alone, the staff identified substantial evidence of patterns of discrimination at not less than twelve major housing developments or complexes (more than 40 units) in the four target areas. In contrast, the project handled only a slighter larger number (13) of cases where small volume housing providers (less than 4 units) were engaged in discriminatory activities.

Just as important, the “mom and pop operations” have little or no effect on the distribution of information about housing availability unless they use the established means for distributing that information throughout the applicable market. The small volume owners rely heavily on classified advertising departments, multiple listing services, real estate firms and agents and other housing dealers and brokers, government agencies, and others in the planning and marketing and management of their

properties. These are not “mom and pop” entities. Yet, in the day-to-day practice, many of these professionals have failed to guide their smaller counterparts in adhering to basic fair housing obligations. Half of the total number of FHEP enforcement actions, all within the last year of the project term, involved those types of professional service providers. In every one of those cases there was substantial evidence to support the allegations of unlawful discrimination.

Recommendation: Fair housing enforcement resources should be concentrated on efforts to eliminate discriminatory practices by large volume housing providers and housing service providers affecting entire markets. Professionals in the housing industry should be held to a higher standard of accountability than imposed upon less informed, low volume independent owners where the likely of actual ignorance of the law is much higher. Relief sought from the smaller independent owners should emphasize in the first instance compensation for direct harm caused, commitments to comply with the law, and obligations to adopt and implement standard business practices. Relief sought from the large volume operators and from the service providers operating throughout a housing market should include remedial action that accounts for harm to the market as a whole as well as injury to individuals and affirmative relief that serves to counteract the climate of discrimination that continues in many of the state’s markets.

E. Fair housing education and training have little deterrent effect on most large volume housing providers and professional housing service providers who engage in unlawful discrimination.

As a general rule, most housing providers and housing service providers make a bona fide effort to comply with state and federal law. They do not act to deny or limit housing opportunities on an illegal basis. They obtain information and training about their obligations and duties as matter of good business. Nevertheless, as noted above, there is a significant minority of members of the housing industry who do not meet those standards and fail in their duty not to discriminate against the law. There is a legitimate question whether additional education and training is the primary means for bringing those members of the industry up to standard.

Past practice of the Human Rights Commission and other civil rights agencies has been to emphasize education of defendants or respondents in their fair housing obligations as the major part of affirmative relief to resolve violations of the law. The results from the Fair Housing Enforcement Project indicate that this emphasis is misplaced. The problem with large volume housing providers or major service providers does not appear to be one of lack of information or education. Most, if not all, are required to be informed about their fair housing obligations or employ personnel or specialists who have a professional obligation in that regard. The problem comes instead with the lack of seriousness toward or regard for implementing fair housing policies.

The most significant evidence supporting that analysis was found in FHEP enforcement actions which involved individual or firm affiliates of the National Association of Realtors. In one case, for example, a major real estate firm in one of the target areas was subject to a complaint for discriminatory advertising and illegal steering which intentionally limited the housing choices of families with children. The agreement settling the claims included admissions to the violations. In the course of the investigation, interviews with several of the firm's more than twenty agents and brokers indicated that none had ever heard of the Voluntary Affirmative Marketing Agreement, none knew that the firm was a subscriber to the agreement and none were aware that they had obtained privileges to avoid certain federal fair housing obligations by the firm's commitment to carry out the strategies and principles of the VAMP.

In another case, the Flathead Board of Realtors, a local affiliate of both the NAR and the Montana Association of Realtors, operated through a subsidiary the local multiple listing service for one of Montana's most active housing markets. The board also had pledged to carry out the strategies and principles of the VAMP and the NAR Code of Equal Opportunity and reported on their compliance regularly. The board was a primary source of training and education of individual agents and brokers. At the same time, the board regularly and continuously published discriminatory listing notices steering families with children away from a number of residential properties in the market for a period of years. The evidence indicated that, after the effective date of the Fair Housing Act Amendments, the board had likely engaged in more 50 violations of state and federal law by printing and publishing statements indicating

illegal preferences. The practice continued until at least April 1995.

In other cases, a number of licensed real estate agents and brokers expressed sentiments that enforcement of the fair housing laws against them was a waste of the state resources. As an example, one Gallatin Valley respondent complained to the Governor upon receiving notice that his occupancy preferences and advertising practices might violate state or federal law, writing that it was a misuse of tax dollars to spend time on such trivial mistakes" and "nonsense." The writer was both a licensed real estate agent and a newspaper publisher.

Recommendation: Community outreach and fair housing education activities should target consumers and low volume, independent housing providers. Other members of the housing industry have greater access, in the ordinary course of their business, to information, training, and expertise about their obligations under the fair housing laws. Consumers, in the sales as well as the rental market, need information about their rights under the law, an understanding of the indicators of discriminatory action, and guidance on how to take action to protect their rights. Whether as part of public service programs or in connection with enforcement actions, the focus of fair housing educational efforts should be shifted to consumers and small property owners if the goal is to make greater progress toward open housing markets.

F. Barriers to equal housing opportunities in Montana communities, especially for families with children, will not be eliminated without effective enforcement of the fair housing laws.

For a decade now the Montana Human Rights Commission has primarily relied upon individually initiated complaints and public education efforts to foster equal housing opportunities in the state. Other state agencies have relied upon the HRC's efforts to demonstrate that the state is fulfilling its responsibility to affirmatively further fair housing in Montana's housing markets. The assumption that individual complaint processing and general public education efforts would eliminate or reduce barriers to equal housing opportunity has not proved true.

The Fair Housing Enforcement Project demonstrated, within its limited scope, the potential of strategic enforcement of fair housing laws in order to increase housing opportunities for members of protected classes, redress harm caused by discrimination, and identify the effects of past discrimination and means for reducing the likelihood of violations in the future. In doing so, the project also demonstrated that under laws substantially equivalent to the federal Fair Housing Act, civil rights agencies now have available effective tools to actually work on the problem of dismantling barriers to free and open housing markets. If the policy of affirmatively furthering fair housing throughout Montana is more than a symbolic one, then the logical course would be to continue and expand such strategic enforcement efforts.

Action by the 1997 state legislature, however, has eliminated that course of action. Prompted in large part by state affiliates of the National Association of Realtors and the U.S. Chamber of Commerce, recent amendments to the Human Rights Act have curtailed the rights of families with children and others under state law to obtain relief from illegal

housing discrimination. The amendments and other legislative action, including a nearly one-third cut in funding for the state's human rights agencies, has also diminished the capacities of the state to protect fair housing rights and to vindicate the public's interest in eliminating illegal housing discrimination.

One of the direct results of those actions has already been a determination by HUD that Montana laws are no longer "substantially equivalent" to federal fair housing laws. See, Appendix, Letter dated June 27, 1997, from the HUD Office of the Assistant Secretary for Fair Housing and Equal Opportunity to the Montana Department of Labor and Industry. Loss of certification will result in a corresponding loss of federal financial support for fair housing enforcement by the state. Although appeal of that determination is expected, it remains an unlikely and remote possibility that the state will have either the legal authority or resources to engage in strategic enforcement of civil rights as demonstrated by the Fair Housing Enforcement Project.

A less direct result of changes worked by the 1997 legislature and the housing industry interest groups may include reduced state capacities to assist in providing additional housing opportunities to its citizens through a variety of federal housing programs. In the past, state agencies involved in such programs have relied significantly on activities of the Human Rights Commission to demonstrate their fulfillment of obligations under those programs to affirmatively further fair housing. Those are obligations of any recipient of federal housing funds.

Since the Commission's enforcement activities have been eliminated and the state's

authority to initiate enforcement to vindicate the public interest has been reduced, questions can be expected concerning how state agencies participating in federal housing programs will not meet their affirmative fair housing responsibilities. Even before the HUD determination that the amended Human Rights Act is not equivalent to federal fair housing law, the state's Department of Commerce had been advised by the Regional HUD Director of concerns about the state's ability to meet its fair housing obligations under federally supported programs and of their expectation that Commerce develop or support supplemental fair housing activities apart from the Human Rights Commission and its successor. See Appendix, Letter Dated May 27, 1997, from the HUD Region VIII Director of Program Operations and Compliance Center to the Governor of the State of Montana. Failure to allay those concerns may place additional federal funding at risk in the future.

Recommendation: For both policy and practical reasons, continued efforts should be made to support strategic state enforcement of the fair housing laws. Patterns of illegal discrimination should be identified and prosecuted vigorously. In the short term, those efforts may be possible in connection with cases pending under the provisions of the Human Rights Act prior to July 1, 1997. In the long term, those efforts may only be possible by the state Attorney General, whose office is now vested with authority under the law to proceed with cases involving patterns and practices of illegal housing discrimination. Without some manner of effective enforcement activities, it is unlikely that the prevalence of housing discrimination in Montana's markets will abate and an increased incidence may be probable.

PART V.

APPENDIX

**PART V.
APPENDIX**

PART I PROJECT RESEARCH ACTIVITIES

Map #1 - Flathead Valley

Map #2 - Bitterroot Valley

Map #3 - Gallatin Valley

Map #4 - Helena Valley

PART II PROJECT INVESTIGATION AND ENFORCEMENT ACTIVITIES

FHEP Case List

PART III COMMUNITY OUTREACH AND EDUCATION

Market Analysis To Determine Negative Factors Influencing Housing
Decisions Concerning Children In Montana Housing Markets

Perceptions Of Fair Housing Laws, Fair Housing Issues and State Fair
Housing Enforcement Practices: The Results of a Statewide Telephone
Survey.

FHEP Six Public Service Articles

FHEP Audio Public Service Announcements

FHEP Fair Housing Poster
(Do Not Reproduce Without Permission)

FHEP Fair Housing Brochure
(Do Not Reproduce Without Permission)

PART IV CONCLUSIONS AND RECOMMENDATIONS

Copy of Senate Bill 350

-- -- Legal Analysis of Montana SB 350

Letter dated May 27, 1997, from HUD Regional Director, John Eubanks to Governor Marc Racicot.

Letter dated June 27, 1997, from HUD Deputy Assistant Secretary, Susan M. Forward, to Commissioner Pat Haffey, Montana Department of Labor and Industry.

Letter dated July 25, 1997, to HUD Deputy Assistant Secretary, Susan M. Forward, from Governor Marc Racicot.

Chronology of Newspaper Articles Concerning Fair Housing Enforcement Issues and the Montana Human Rights Commission.

PART V MISC. APPENDIX DOCUMENTS

Orders:

Order dated July 9, 1997, MacIntyre, ex rel, Western Montana Fair Housing v. Devoe., Cause No. 91532/87 (4th Judicial District, Missoula County)

Complaints:

Montana Fair Housing, Inc., v. GTE Directories Corporation and ALLTEL Publishing Corporation - Case No. 9702008073

Susan K. Fifield obo Montana Fair Housing v. Bitterroot Gateway Trailer Park and Terry Burkholder - Case No. 9702008186

Settlements:

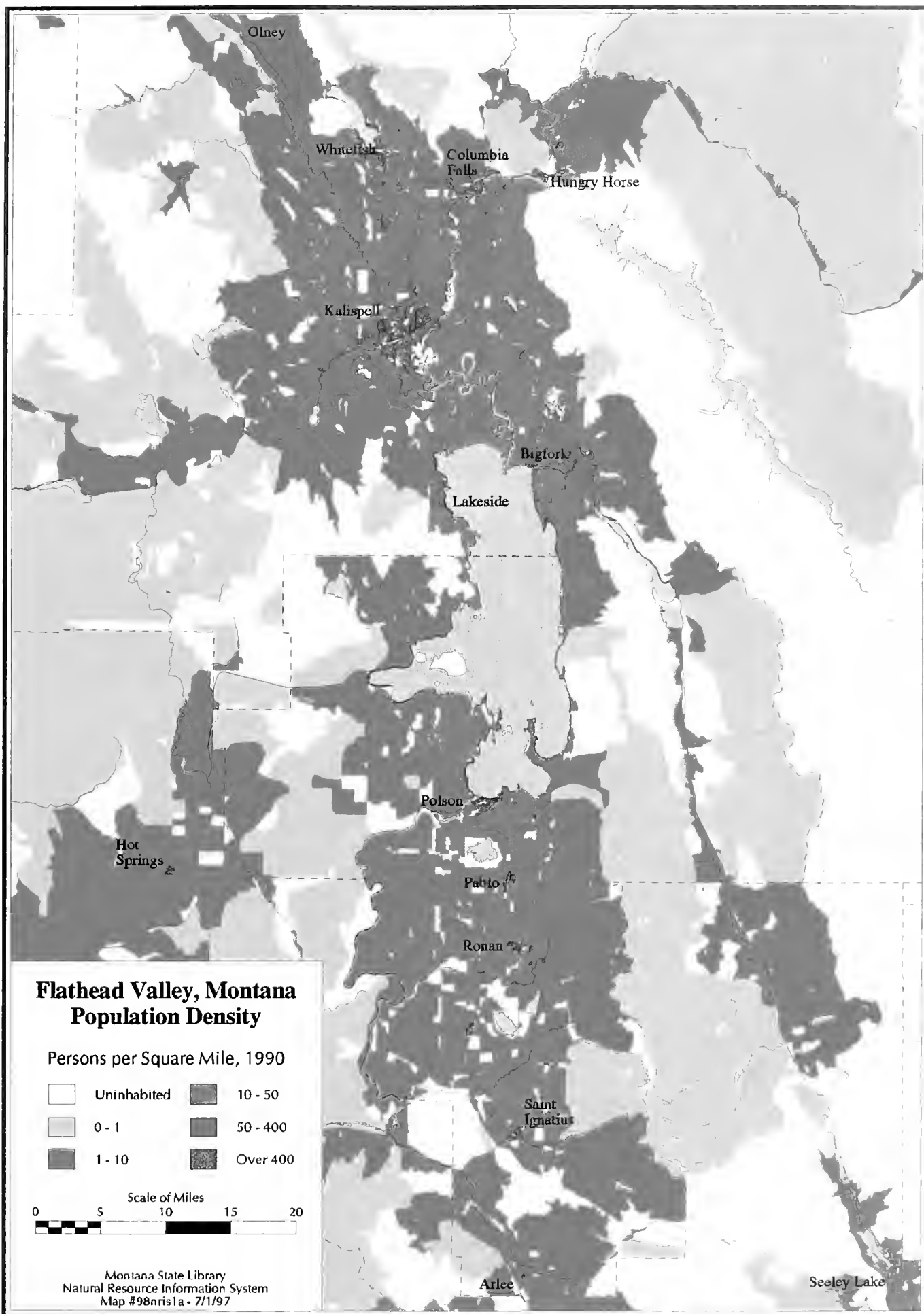
Montana Human Rights Commission v. Glacier Village Greens, Inc., et al., Cause No. BDV-96-964, First Judicial District Court.

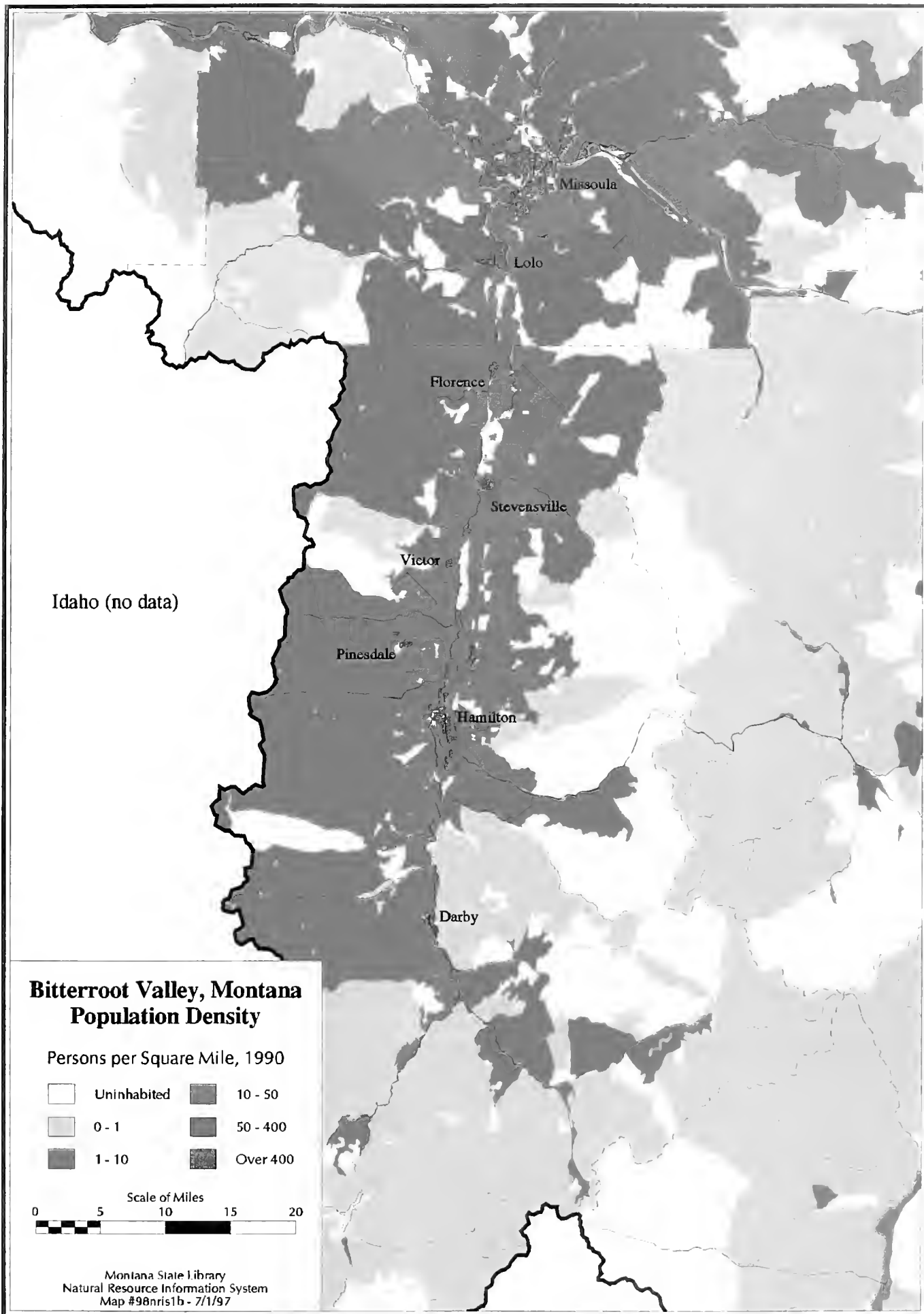
Anne L. MacIntyre, Administrator, Montana Human Rights Commission staff, v. Century 21 Home and Investment Center, Inc., and Larry O. Lee, HRC Case No. 9602007653.

Human Rights Commission Staff, v. Lee and Judy Reynolds d/b/a Mobile City Home Park, and Laura Chevallais, HRC Cause Nos. 9702007809 and 9702007823.

Sharon Amdahl v. Lee and Judy Reynolds d/b/a Mobile City Home Park, HRC No. 9702007850.

Human Rights Staff, v. Lee Enterprises, Inc., HRC Case No. 9702008246.









FHEP FAIR HOUSING CASES
HRC Fair Housing Enforcement Project
Case List

Case Name: Charging Party/Plaintiff versus Respondent/Defendant
Case Number (Market Location) Disposition/Status

1. COURT ACTIONS

Montana Human Rights Commission v. Glacier Village Greens, Inc.,
Cause No. BD96964 (1st Jud. District)(Helena), Settled by Conciliation;
See also: Human Rights Commission Staff v. Glacier Village Greens Homeowners Association, Inc., No Case No./No Action (Flathead) - Association not operational during relevant time period

Anne L. MacIntyre, Administrator, Montana Human Rights Commission, ex rel. Paulina Brabham et al. v. Charles and Viola Keller and Frank and Mary Cabbage,
Cause No. DB950536A (11th Jud. District)(Flathead), Open Case

Anne L. MacIntyre, Administrator, Montana Human Rights Commission, ex rel. Western Montana Fair Housing Board nka Montana Fair Housing, Inc., v. Devoe,
Cause No. 91532/87 (4th Jud. District) (Bitterroot), Open Case

2. ADMINISTRATIVE HEARINGS

Human Rights Commission Staff ex rel. Brock Albin and Mario LoGalbo v. Commissioner of Higher Education, HRC Nos. 9202005248 and 9202005250 (Gallatin)
Settled by Conciliation

Human Rights Commission Staff ex rel. Western Montana Fair Housing Board nka Montana Fair Housing, Inc.v. Harley and Ann Sullivan, HRC Nos. 9502006641 and 9502006606 (Flathead) Settled by Conciliation/Consent Order

Toni Austad on behalf of Concerned Citizens Coalition v. Commissioner of Higher Education, HRC No. 9502007156 (Gallatin) Settled by Conciliation

Anne L. MacIntyre, Administrator, Montana Human Rights Commission, v. Century 21 Home and Investment Center, Inc. and Larry Lee, Broker/Owner,
HRC No. 9602007653 (Flathead) Settled by Conciliation

3. ADMINISTRATIVE INVESTIGATIONS

Human Rights Commission Staff v. Laura Chevallis,
HRC No. 9702007823 (Helena) Settled by Conciliation

Anne L. MacIntyre, Administrator, Montana Human Rights Commission, v. Chuck Olson
Real Estate, HRC No. 9602007652 (Flathead) Settled by Conciliation

Montana Fair Housing, Inc., v. Westana Mobile Manor Park, et al.,
HRC Nos. 9602007628, 9602007629, and 9602007665 (Bitterroot) Settled by
Conciliation

Gortons v. Westana Mobile Manor Park, et al.,
HRC Nos. 9602007640 and 9602007642 (Bitterroot) Settled by Conciliation

Campbell v. Westana Mobile Manor Park, et al.,
HRC No. 9602007626 (Bitterroot) Settled by Conciliation

C.T. v. Gem Mercer,
HRC No. 9602007546 (Flathead) Settled by Conciliation

Montana Fair Housing, Inc., v. Sail Maker Realty,
HRC No. 9602007500 (Flathead) Settled by Conciliation

Anne L. MacIntyre, Administrator, Montana Human Rights Commission, v. Rod Bitney
dba Village Greens Properties, HRC No. 9702007776 (Flathead) Settled by Conciliation

Human Rights Commission Staff v. Lee and Judy Reynolds dba Mobile City Home Park,
HRC No. 9702007809 (Helena) Settled by Conciliation/Consent Order

Human Rights Commission Staff v. Lee Enterprises dba Missoulain, Adit, Western
Montana Messenger, Thrifty Nickel, HRC No. 9702008246 (Helena, Bitterroot, Gallatin,
Flathead) Settled by Conciliation/Consent Order

Sharon Amdahl v. Lee and Judy Reynolds dba Mobile City Home Park,
HRC No. 9702007850 (Helena) Settled by Conciliation/Consent Order

Kevin Wood v. Archie Taylor dba Brighter Living Adult Park,
HRC No. #9702007863 (Helena) Open Case

Human Rights Commission Staff v. Lee Sloan,
HRC No. 9702007859 (Gallatin) Settled by Conciliation

Human Rights Commission Staff v. John Steingruber,
HRC No. 9702007872 (Gallatin) Settled by Conciliation

Human Rights Commission Staff v. Mary Helen Critchlow,
HRC No. 9702007942 (Flathead) Settled by Conciliation

Human Rights Commission Staff v. *Three Forks Herald*,
HRC No. 9702007948 (Gallatin) Settled by Conciliation

Montana Fair Housing, Inc., v. Ron's Mobile Homes, Inc. and Ron Erickson,
HRC No. 9702007955 (Bitterroot) Settled by Conciliation

Human Rights Commission Staff v. *West Yellowstone News*,
HRC No. 9702007859 (Gallatin) Settled by Conciliation

Human Rights Commission Staff v. Beth Michaud,
HRC No. 9702007952 (Flathead) Settled by Conciliation

Human Rights Commission Staff v. C. L. Anderson,
HRC No. 9702007949 (Bitterroot) Settled by Conciliation

Montana Fair Housing, Inc., v. GTE Directories Corporation, PTI Communication, and Alltell Publishing Company, HRC No. 9702008073 (Flathead) Open Case

Lorene Campbell and Montana Fair Housing, Inc., v. Barnes et al.,
HRC Nos. 9602007709 and 9602007710 (Bitterroot) Open Case

Anne L. MacIntyre, Administrator Human Rights Commission, ex rel. Montana Fair Housing, Inc., v. Blacker, et al., HRC Nos. 9502006646 and 9602007712 (Bitterroot, Flathead) Open Case

Susan Fifield v. Bitterroot Gateway Park and Terry Burkholder,
HRC Nos. 9702008185 (Bitterroot) Open Case

Bruce Gobeo on behalf of R.R., a minor, v. Bitterroot Gateway Park and Terry Burkholder, HRC Nos. 9702008186 (Bitterroot) Open Case

4. PRECOMPLAINT DISPOSITIONS

Human Rights Commission Staff v. James and Betty Sigurdson,
No Case No./Pre-Complaint Conciliation (Helena)

Human Rights Commission Staff v. Florence Trebas,
No Case No./Pre-Complaint Conciliation (Flathead)

Human Rights Commission Staff v Fred Heinz,
No Case No./Pre-Complaint Conciliation (Flathead)

Human Rights Commission Staff v. Lois Kimpton,
No Case No./Pre-Complaint Conciliation (Gallatin)

Human Rights Commission Staff v. *Lone Peak Lookout* and Kevin Kelleher,
No Case No./Pre-Complaint Conciliation (Gallatin)

Human Rights Commission Staff v. *Boulder Monitor*,
No Case No./Pre-Complaint Conciliation (Gallatin)

Human Rights Commission Staff v. Betty Ranney,
No Case No./Pre-Complaint Conciliation (Gallatin)

Human Rights Commission Staff v. James Whaley,
No Case No./Pre-Complaint Conciliation (Helena)

Human Rights Commission Staff v. George Matranga,
No Case No./Pre-Complaint Conciliation (Bitterroot)

Human Rights Commission Staff v. Ruth Minehan,
No Case No./No Action - Insufficient Evidence to Proceed (Gallatin)

Human Rights Commission Staff v. Doug Gaut,
No Case No./No Action - Insufficient Evidence to Proceed (Bitterroot)

Human Rights Commission Staff v. *Missoula Independent*,
No Case No./No Action - Insufficient Evidence to Proceed (Bitterroot)

Human Rights Commission Staff v. John Doe dba 892-2402,
No Case No./No Action - Unable to Locate Respondent (Flathead)

Human Rights Commission Staff v. Don Estep dba Courtyard Apartments,
No Case No./No Action - Due to Change in Legislative Policy (Gallatin)

Human Rights Commission Staff v. John Postethwaite,
No Case No./No Action - Due to Change in Legislative Policy (Bitterroot)

Human Rights Commission Staff v. Bud Salmondson,

No Case No./No Action - Due to Change in Legislative Policy (Helena)

Human Rights Commission Staff v. Charles Meyer,

No Case No./No Action - Due to Change in Legislative Policy (Helena)

Human Rights Commission Staff v. Marguarita Barnes,

No Case No./No Action - Due to Change in Legislative Policy (Helena)

FHEP FAIR HOUSING CASES
HRC Fair Housing Enforcement Project
Case List (Monitoring Only)*

Montana Human Rights Commission vs. Flathead County Commissioners

Montana Human Rights Commission vs. Fairway Boulevard Home Owners Association, Inc.

Montana Human Rights Commission vs. Rawlings Mobile Home Village Homeowners Association, Inc.

Montana Human Rights Commission vs. Patty Seaman Homes, Inc.

Montana Human Rights Commission vs. Coldwel Banker Realty/Paul D. Wacholz

Montana Human Rights Commission vs. RE/MAX, Phillip Neuharth

Montana Human Rights Commission vs. Individual Licensed Real Estate Agents (Vicki Olson, Carolyn Atkinson, Billie Erickson, Greg Garrison, Nick Hanson, Melissa Loomis, Robert Nadvornick, Randy Shelton, David J. Walker

Montana Human Rights Commission vs. Flathead Board of Realtors, Inc., n/k/a Northwest Montana Association of Realtors, Inc. (NMAR)

* All monitoring cases concerned residential properties in the Flathead Valley housing market and were resolved by pre-complaint conciliation and settlement agreements.

**MARKET ANALYSIS TO DETERMINE
NEGATIVE FACTORS INFLUENCING
HOUSING DECISIONS CONCERNING
CHILDREN IN MONTANA HOUSING
MARKETS:
FINAL REPORT**

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April, 1997

INTRODUCTION AND METHODOLOGY

This is the final report for the research project "Market Analysis to Determine Negative Factors Influencing Housing Decisions Concerning Children in Montana Housing Markets." The project was conducted for the Montana Human Rights Commission by Montana State University-Billings. The three co-principal investigators for the project were Joe W. Floyd, Ph.D., William H. McBroom, Ph.D., and Fred W. Reed, Ph.D.

The research strategy for the project consisted of three stages arranged sequentially so that the results of each stage formed the basis of the next stage. The three stages of the project were: personal interviews with selected key informants in each of the four market areas (Gallatin, Bitterroot, Flathead and Helena), 2 focus groups with individuals directly involved in housing in each of the four market areas for a total of 8 focus groups, and a telephone survey completed with 403 randomly selected adult residents of Montana."

Previously submitted documents have summarized the results of the personal interviews, the focus groups and the telephone surveys. The purpose of this document is to synthesize the conclusions of the three stages of the study.

CONCLUSIONS

Conclusions from Interviews

The following conclusions can be drawn from the personal interviews which were conducted by telephone or in person with 47 individuals including property developers, property managers, lenders, insurers, planners, licensed real estate agents, city and county officials, owners of rental property, people who had been the victims of housing discrimination, people charged with housing discrimination, and experts in the area of housing and housing discrimination. Because it was difficult to contact victims of housing discrimination, they were under represented in the interviews. Interviews were conducted in October and November of 1996.

- Many of the people interviewed were quite knowledgeable about fair housing issues and fair housing laws.
 - Many reported knowing that fair housing laws are designed to protect against discrimination on the grounds of race disability, creed, and ethnic origin.
 - Virtually all people interviewed were aware that fair housing laws prohibit housing discrimination against families with children under 18.
 - Virtually all people interviewed expressed confusion about exemptions to fair housing laws for elderly people.
- Local officials, licensed real estate agents, and property managers report having a good deal of information about fair housing laws while lenders and developers had less knowledge.

- Families with children, as well as the general public, were thought to be relatively uninformed about fair housing laws.
- Most of the people interviewed indicated were not aware of current housing discrimination in their communities. However, the people interviewed who were aware indicated that housing discrimination was very common in Montana.
 - People interviewed supported fair housing laws in principal.
 - There was virtual unanimous personal support for protecting the housing rights of families with children under 18.
 - However, many people interviewed expressed concern about the way in which fair housing laws are enforced.
- All of the people interviewed said they liked being around children.
- There was consensus that good tenants are those who pay rent on time, take care of the property, respect neighbors, and do not cause complaints.
- Prospective home buyers were universally considered “good” if they had financial means and a good credit history. Other dimensions, such as the potential for being a good neighbor, were not considered.

Conclusions from Focus Groups

The following conclusions can be drawn from the discussion by participants at the focus groups conducted for this research project. A total of eight focus groups were conducted, two in each of the four market areas. Focus group participants included: property developers, property managers, lenders, insurers, planners, licensed real estate agents, city and county officials, owners of rental property, people who had been the victims of housing discrimination, people charged with housing discrimination, and experts in the area of housing and housing discrimination. The focus groups were conducted in December of 1996 and January of 1997.

- A considerable amount of housing discrimination exists in Montana.
- Many people are uneducated about fair housing laws.
- Most housing discrimination is perpetrated by “mom and pop” landlords. Professional property managers, licensed real estate agents, etc. are not likely to engage in discriminatory practices. It was pointed out that these professionals are invested in a career they could lose or seriously damage if caught discriminating.
- There is a perception that the current state of the real estate law is advantageous to tenants and disadvantageous to property owners. Tenants often do not obey the law and may take unfair advantage of fair housing laws
- People who are in the business of providing rental housing tend to group together all of the different types of laws which they feel make their business difficult, e.g. they do not distinguish between landlord-tenant law and fair housing law. Therefore, some of their negative feelings about the enforcement of fair housing laws may be based upon their feelings about landlord-tenant law.
- Most participants believed that fair housing laws are necessary and that the intent of such laws is fair and just. Participants agreed that access to housing should not be

limited for members of protected classes. Underlying this sentiment seemed to be strong sense of personal justice.

- One “camp” of participants believed that discrimination occurs, that the laws are very necessary, fair and just in intent. These participants seemed to know little about and have no opinion about enforcement of the laws.
- The second “camp” of participants believed the laws were necessary and just, but expressed a great deal of concern about the way in which the Montana Human Rights Commission enforces fair housing laws. These participants did not feel the enforcement was fair. The Commission was perceived as violating due process and the Commission was believed to use intimidation and bullying practices. Due process violations involved not receiving a trial before one’s peers, being presumed guilty until proven innocent, and that the Commission could profit financially by keeping the fines it collects.
- Fair housing is consistent with good business. Protected classes were not viewed as imposing disproportionate wear and tear on housing or causing more problems than were any other category of renter or resident.
- Participants shared the view that testing was necessary in many instances to identify cases of housing discrimination.
 - However, some participants believed that testing procedures used in the state of Montana were unnecessarily intrusive on citizens and businesses, did not meet the verification standards usually met by federal testers and used techniques intended to deceive and entrap guileless and well intentioned citizens.
- Inflation was generally viewed to be a major component of difficulty in housing access to protected classes. Current building costs push housing out of the reach of disadvantaged groups.
- Of the several hypothetical housing ads presented to participants, few were considered discriminatory.
- There is a perceived problem with laws and policies which restrict language in advertising because of fair housing issues. These laws are seen as unworkable and engender hostility.

Conclusions from Telephone Survey

The following conclusions are drawn from a telephone survey completed with 403 respondents. Unlike the interviews and focus groups which were conducted with very non representative groups of individuals in the Gallatin, Bitterroot, Flathead and Helena housing markets, the respondents to the survey were a randomly selected sample of all adult residents of Montana. Also unlike the results of the interviews and focus groups, the results of this survey are statistically generalizeable to the population of adult residents of Montana and when such generalizations are made, the binomial margin of error is $\pm 5\%$. The survey was conducted from February 28, 1997 to March 4, 1997.

- Generally, respondents did not consider themselves knowledgeable about either fair housing laws or fair housing issues in their local community.

- Seventy-one percent of the respondents believed it was illegal to discriminate against families with children when renting or selling homes. In terms of the percentage of respondents saying a particular characteristic made housing discrimination illegal, families with children was 6th out of 9, just above sexual orientation.
- Most respondents felt that anti-housing discrimination laws based on race, handicapping condition, religion, sex, age, marital status, and having children within a household are necessary laws. Seventy-three percent of the respondents believed that anti-discrimination laws for families with children were necessary or very necessary as compared to 77.2% for handicapping condition and 67.2% for sex.
- Most respondents felt that anti-housing discrimination laws based on race, handicapping condition, religion, sex, age, marital status, and having children within a household are fair laws. Eighty-three percent of the respondents believed that anti-discrimination laws for families with children were fair or very fair as compared to 89.9% for marital status and 79.9% for race.
- Forty-seven percent of the respondents felt that laws making discrimination illegal on the basis of children in the household worked well as compare to 54.5% for sex and 44.1% for race.
- Setting aside the issues of sexual orientation and college student status, the most important criteria for desirable neighbors was being childless.
- Most of the respondents to this survey liked being around children.
- Sixty-three percent of the respondents had heard of the Montana Human Rights Commission.
- Forty percent of respondents replied with an 8, 9 or 10 when evaluating the worthwhileness of the Commission on a 1 to 10 scale. The mean on this scale was 6.5
- Sixty-eight percent of the respondents who were familiar with a case in which the Commission enforced housing laws believed the enforcement was either necessary or very necessary and 68% felt the enforcement was handled fairly or very fairly.
- Fifty-nine percent of the respondents who were familiar with a case in which the Commission enforced employment laws believed the enforcement was handled fairly or very fairly.
- A composite variable combining all the questions asking for opinions about children was constructed and named the Overall Attitude Towards Children Scale (OATCS). The following bivariate relationships were found with this variable:
 - Women scored statistically higher on this scale than men.
 - Respondents who knew none of their neighbors' names or all of their neighbors' names scored higher on the OATCS than did respondents who knew some of their neighbor's names.
 - Respondents who had known someone who was a victim of housing discrimination scored higher on the OATCS than did those who had not known a victim.
 - Respondents who indicated they had experienced bad neighbors within the last five years scored lower on the OATCS than did respondents who had not experienced bad neighbors.

- The higher respondents' scores on the childhood happiness question the higher their score on the OATCS.
- The higher respondents' scores on the sociability question, the higher their score on the OATCS.
- The more people in the respondents' households, the higher the score on the OATCS.
- The more worthwhile the respondent perceived the Montana Human Rights Commission to be, the higher their score on the OATCS.
- The more siblings a respondent reported, the higher his or her score on the OATCS.
- The older a respondent, the lower his or her score on the OATCS.
- Those with negative attitudes toward children, as measured by the Bensen and Bensen Scale, tend to be male, have low incomes, are older persons, report unhappy childhoods, and do not know the names of many neighbors. As well, they express preference for having an elderly white childless couple for neighbors, and a "dispreference" for a Native American Indian Family with 2 children.
- Those who support fair housing, as measured by the Diaz-Veizades et al. scale are likely to value having an Indian Family with children for neighbors and less likely to desire an elderly, childless, white couple for neighbors.

Overall Conclusions

- Housing discrimination is fairly wide spread in the four market areas.
- Fair housing laws are generally considered to be necessary and fair.
- While people generally do not believe they are very knowledgeable about fair housing laws, it would appear that most people know quite a bit. The area of exemptions to fair housing laws for senior citizens is not well known.
- People believe they are not very knowledgeable about local fair housing issues and this perception seems valid.
- Generally an overall positive attitude toward children was associated with:
 - Being a woman.
 - Not reporting bad neighbors within the last 5 years.
 - Having a happy childhood.
 - Considering oneself a social person.
 - Having a large household.
 - Coming from a large family of origin.
 - Believing the Montana Human Rights Commission to be worthwhile.
- Negative attitudes toward children as measured by the Bensen and Bensen scale were associated with:
 - Being male.
 - Having a low income.
 - Being older.
 - Having an unhappy childhood.
 - Not knowing the names of neighbors.

- Preferring an elderly, white, childless couple for neighbors.
 - Not desiring a Native American family with children for neighbors.
- Fair housing support as measure by the Diaz-Veizades et. al. Scale was associated with:
 - Prefer an Indian family as neighbors.
 - Do not prefer an elderly, childless, white couple as neighbors.
- Generally, people in the property management business and related businesses as well as rental property owners feel that existing laws favor tenants and provide no protection of those who own the property. Fair housing laws are considered as part of these unfair to landlord laws.
- People in the property management and related businesses believe the Montana Human Rights Commission unfairly and unjustly enforce fair housing laws.
 - One is presumed guilty and must prove themselves innocent.
 - One does not get a trial before a jury of their peers.
- The overall view of the Montana Human Rights Commission by the general public is fairly positive. Sixty-three percent of the respondents to the telephone survey had heard of the Commission, 40% responded with an 8, 9 or 10 when evaluating the worthwhileness of the Commission on a 1 to 10 scale and the mean was 6.5. Sixty-eight percent of the respondent familiar with a case in which the Commission enforced housing laws believed the enforcement was necessary or very necessary and 68% believed it was fair or very fair.

**PERCEPTIONS OF FAIR HOUSING
LAWS, FAIR HOUSING ISSUES AND
STATE FAIR HOUSING
ENFORCEMENT PRACTICES:
THE RESULTS OF A STATEWIDE
TELEPHONE SURVEY**

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April, 1997

TABLE OF CONTENTS AND LIST OF TABLES

Introduction	1
Methodology	1
Table One: Disposition of All Telephone Calls	1
Findings	2
Demographic Characteristics of the Respondents	2
Table Two: Sex, Ethnicity and Age of Respondents	2
Table Three: Household Characteristics of Respondents	3
Table Four: Education and Political Party Preference	4
Table Five: Respondent Housing	5
Table Six: Respondent Childhood	6
Table Seven: Real Estate Experience	7
Table Eight: Respondent Sociability	8
Knowledge of Fair Housing Laws and Fair Housing Issues	8
Table Nine: Self Rated Knowledge of Fair Housing	9
Table Ten: Respondents' Opinion of Discrimination Illegality	9
Table Eleven: Perceived Necessity of Discrimination Laws	10
Table Twelve: Perceived Fairness of Discrimination Laws	11
Table Thirteen: Perceived Effectiveness of Discrimination Laws	11
Attitudes Toward Living Next Door to Different Types of Households	12
Table Fourteen: Feel About Living Next Door To	12
Attitudes About Children	13
Table Fifteen: Some Negative Attitudes About Children	13
Table Sixteen: Like Being Around Children	14
Rights and Entitlements	14
Table Seventeen: Some Attitudes About Rights and Entitlements	15
Experience With Housing Discrimination	15
Table Eighteen: Experience With Housing Discrimination	15
Classified Advertisements	16
Table Nineteen: Classified Advertisements	17
Experiences with Neighbors	17
Table Twenty: Neighbors	18
Perceptions of the Montana Human Rights Commission	18
Table Twenty-one: Montana Human Rights Commission	19

TABLE OF CONTENTS AND LIST OF TABLES

Introduction	1
Methodology	1
Table One: Disposition of All Telephone Calls	1
Findings	2
Demographic Characteristics of the Respondents	2
Table Two: Sex, Ethnicity and Age of Respondents	2
Table Three: Household Characteristics of Respondents	3
Table Four: Education and Political Party Preference	4
Table Five: Respondent Housing	5
Table Six: Respondent Childhood	6
Table Seven: Real Estate Experience	7
Table Eight: Respondent Sociability	8
Knowledge of Fair Housing Laws and Fair Housing Issues	8
Table Nine: Self Rated Knowledge of Fair Housing	9
Table Ten: Respondents' Opinion of Discrimination Illegality	9
Table Eleven: Perceived Necessity of Discrimination Laws	10
Table Twelve: Perceived Fairness of Discrimination Laws	11
Table Thirteen: Perceived Effectiveness of Discrimination Laws	11
Attitudes Toward Living Next Door to Different Types of Households	12
Table Fourteen: Feel About Living Next Door To	12
Attitudes About Children	13
Table Fifteen: Some Negative Attitudes About Children	13
Table Sixteen: Like Being Around Children	14
Rights and Entitlements	14
Table Seventeen: Some Attitudes About Rights and Entitlements	15
Experience With Housing Discrimination	15
Table Eighteen: Experience With Housing Discrimination	15
Classified Advertisements	16
Table Nineteen: Classified Advertisements	17
Experiences with Neighbors	17
Table Twenty: Neighbors	18
Perceptions of the Montana Human Rights Commission	18
Table Twenty-one: Montana Human Rights Commission	19

Analysis	20
The Overall Attitude Toward Children Scale	20
Table Twenty-two: Distribution of the Values of the Overall Attitude Toward Children Scale	21
Statistically Significant Bivariate Relationships with the OATCS	21
Statistically Significant Bivariate Relationships with the Components of the OATCS	22
First Component	22
Second Component	23
Third Component	23
Fourth Component	24
Statistically Significant Relationships with Respondents' Perception of the Worthwhileness of the Montana Human Rights Commission	24
Predicting Negative Attitudes Toward Children and Support of Fair: Housing: Further Analysis of the Bensen and Bensen Disapproval Scale and the Diaz-Veisades et al. Support of Fair Housing Scale	25
Table Twenty-two: Regression Results for Disapproval of Children and Support of Fair Housing	26
Summary	27
Conclusions	32

INTRODUCTION

This report summarizes the proceedings and findings of a telephone survey completed with 403 randomly selected adult residents of Montana. The survey was conducted for the Montana Human Rights Commission and was a part of a larger study which included personal interviews with key informants and focus groups with a variety of people involved in four housing markets within the state. The purposes of the larger study as well as this survey were: to determine the attitudes of Montanans toward fair housing laws, fair housing issues, and the Montana Human Rights Commission.

METHODOLOGY

The survey was conducted from February 28 to March 4, 1997. Interviews were completed by trained interviewers from the six station Computer Assisted Telephone Interviewing Laboratory (CATI Lab) at Montana State University, Billings. A trained supervisor was present at all times during the interviewing.

A random digit dialing sampling technique was used to select telephone numbers and numbers were called back up to five times as appropriate in an attempt to complete interviews. In order to complete 403 interviews, it was necessary to make 2504 telephone calls to 2045 telephone numbers. Table One summarizes the dispositions of each of these calls.

TABLE ONE
DISPOSITION OF ALL TELEPHONE CALLS

No Answer	435	17.4%
Busy	168	6.7%
Answering Machine	272	10.9%
Fax or Computer	83	3.3%
Non Working Number	607	24.2%
Non Residential Number	152	6.1%
Hearing Problem	3	.1%
Incompetent Respondent	1	.1%
Refused	273	10.9%
Callback	89	3.6%
Wrong Sex	3	.1%
Other Wrong Category	4	.2%
Hung Up	10	.4%
Argumentative	1	.1%
Complete	403	16.1%

After the interviewing was completed, the data were electronically transferred from the CATI computer system to the VAX mainframe system at Montana State University,

Billings. The computer program Statistical Package for the Social Sciences (SPSS) was used to analyze the data.

FINDINGS

Demographic Characteristics of the Respondents

The respondents were asked a rather large number of demographic questions on this survey. Table Two summarizes the sex, ethnicity and age of respondents. Table Two shows that half the respondents were male and half were female. The vast majority of the respondents (92.5%) were white. Slightly more than one quarter of the respondents were 35 years old or less, about one quarter were between 36 and 45, about one fifth were between 46 and 55 and the remaining one quarter were over 55. The mean age of the respondents was 46.3.

**TABLE TWO
SEX, ETHNICITY AND AGE OF RESPONDENTS**

Sex		
Male	202	50.1%
Female	201	49.9%
Ethnicity		
White	371	92.5%
Black	5	1.2%
Native American	7	1.7%
Hispanic	4	1.0%
Asian	2	.5%
Multiracial	10	2.5%
Other	2	.5%
Age		
18 - 25	48	12.0%
26 - 35	61	15.2%
36 - 45	101	25.2%
46 - 55	83	20.7%
56 - 65	48	12.0%
66 - 75	33	8.2%
76 and Older	23	5.7%
Mean Age = 46.3		

Table Three summarizes the characteristics of the households of the respondents. Table three shows that 65.3% of the respondents were currently married while 14.7% were single, never having been married, and 10% were divorced. The typical respondent had 2.03 children and the mean household size was 2.61. About one fifth of the respondents reported a household income of \$15,000 or less in 1996 while 31.1% reported a household income between \$15,001 and \$30,000 and 15.2% of the respondents reported incomes in excess of \$50,000.

TABLE THREE
HOUSEHOLD CHARACTERISTICS OF RESPONDENTS

Marital Status

Single, Never Married	59	14.7%
Cohabiting	8	2.0%
Married	262	65.3%
Divorced	40	10.0%
Separated	5	1.2%
Widowed	27	6.7%

Number of Children

0	89	22.2%
1	67	16.7%
2	116	28.9%
3	58	14.5%
4	43	10.7%
5	13	3.2%
More than 5	15	3.7%

Mean Number of Children = 2.03

Number in Household

1	87	21.6%
2	151	37.6%
3	59	14.7%
4	70	17.4%
5	18	4.5%
6 or More	17	4.2%

Mean Household Size = 2.61

Household Income

Less than \$15,000	70	19.4%
\$15,001 - \$30,000	112	31.1%
\$30,001 - \$40,000	68	18.9%
\$40,001 - \$50,000	55	15.3%
\$50,001 - \$75,000	39	10.8%
\$75,000 - \$100,000	9	2.5%
Over \$100,000	7	1.9%

Table Four summarizes the educational attainment and political party preference of the respondents. Table Four shows that about 9% of the respondents had less than a high school education, 32.2% had just a high school education, 28.7% had some college, 20% had received just a college degree, and 10.5% had completed some graduate work in college. The mean grade level attained by respondents was 13.7.

One third of the respondents indicated they were Republicans, 28% were Democrats, and 38.7% indicated they were independent. The independents were asked if they typically leaned more toward a Republican or a Democratic ideology or if they were truly independent. About one fifth of the independents said they leaned toward Republicans while about one quarter said toward Democrats and the remainder of some 57.1% said they were truly independent.

TABLE FOUR
EDUCATION AND POLITICAL PARTY PREFERENCE

Educational Attainment

Less than HS Graduate	35	8.7%
High School Graduate	129	32.2%
Some College	115	28.7%
College Graduate	80	20.0%
Graduate Education	42	10.5%

Mean Grade Completed = 13.7

Political Party Preference

Republican	122	33.2%
Democrat	103	28.1%
Independent	142	38.7%

Leaning for Independents

Republican	27	19.3%
Democrat	33	23.6%
Neither	80	57.1%

Table Five summarizes the answers to questions about the respondents housing. Table Five shows that 62.5% of the respondents either owned their home or were buying it while another 5% owned or were buying a mobile home and an additional .5% owned or were buying a condominium. Slightly more than one quarter of the respondents were renting their residence.

Over one quarter of the respondents indicated they had only lived at their current residence for 2 years or less while over half reported they had only lived at their current residence for 5 years or less. The mean number of years the respondents had lived in their current residents was 10.8.

**TABLE FIVE
RESPONDENT HOUSING**

Type of Housing

Own-Buying Home	262	65.5%
Renting Home	53	13.3%
Own-Buying Mobile Home	20	5.0%
Rented Apartment	50	12.4%
Rented Room	3	.8%
Buying Condominium	2	.5%
Other	10	2.5%

How Long in Current Residence

1 - 2 Years	112	27.8%
3 - 5 Years	98	24.3%
6 - 10 Years	63	15.6%
11 - 20 Years	58	14.4%
21 - 30 Years	38	9.4%
Over 30 Years	34	8.4%

Mean Years in Residence = 10.8 Years

The respondents were asked several questions about their family of origin and their childhood. Table Six summarizes the answers to these questions. Table Six shows that 30% of the respondents were an oldest child, 28.4% were a youngest child, 34.4% were a middle child and 7% were an only child. One quarter of the respondents reported they had two siblings while one fifth reported only one sibling.

The respondents were asked to rate the happiness of their childhood on a 1 to 10 scale where 1 was not happy at all and 10 was very happy. Table Six shows that 42.6% rated their childhood happiness at a 10 and that the mean score on this question was 8.06. Only 17.4% of the respondents gave their childhood happiness a rating of 5 or less on the 10 point scale.

**TABLE SIX
RESPONDENT CHILDHOOD**

Position in Family of Origin

Oldest	120	30.1%
Youngest	113	28.4%
Middle	137	34.4%
Only	28	7.0%

Number of Siblings

0	28	7.0%
1	80	20.1%
2	103	25.6%
3	66	16.5%
4	48	12.0%
5	20	5.0%
6 or More	54	13.5%

Childhood Happiness

1	7	1.8%
2	6	1.5%
3	15	3.8%
4	10	2.5%
5	31	7.8%
6	17	4.3%
7	27	6.8%
8	75	18.9%
9	40	10.1%
10	169	42.6%

Mean Childhood Happiness = 8.06

The respondents were also asked some questions about any professional involvement they might have in real estate. Table Seven summarizes the answers to these questions. Table Seven shows that slightly more than one quarter of the respondents reported that they did or had owned rental property. Sixty percent of these respondents reported they had only one rental property while another 17% indicated they had owned 2 rental units.

Slightly more than one fifth of the respondents indicated they had managed rental property. While 40% of the respondents who reported managing only one unit and 18.3% managed two, nearly 30 reported managing 5 or more units. Only 11 respondents reported they were or had been licensed to sell real estate and only 6 respondents (1.5% of the total) indicated they had been or were licensed to sell real estate in Montana.

**TABLE SEVEN
REAL ESTATE EXPERIENCE**

Ever Owned Rental Property

Yes	104	25.9%
No	297	74.1%

How Many Units

1	60	59.4%
2	17	16.8%
3	9	8.9%
4	8	7.9%
5 - 10	4	4.0%
More than 10	3	3.0%

Ever Managed Rental Property

Yes, in Montana	64	16.0%
Yes, Not in Montana	22	5.5%
No	316	79.0%

Number of Units Managed

1	32	39.0%
2	15	18.3%
3	4	4.9%
4	8	9.8%
5 - 10	16	19.6%
More than 10	7	8.5%

Licensed to Sell Real Estate

Yes, In Montana	6	1.5%
Yes, Not in Montana	5	1.2%

The respondents were asked if they knew the names of their neighbors. Table Eight shows that 56.3% of the respondents indicated they knew the names of all their neighbors while 35.4% said they knew the names of some of their neighbors and 8.3% said they did not know the names of any of their neighbors.

The respondents were also asked to rate them selves on a 10 point sociability scale where 1 indicates a person that is not social at all and keeps mostly to themselves and 10 indicates a very social person who spends a lot of time in the company of other people.

Table Eight also summarizes the answers to this question and shows a mean score on this scale of 7.03.

**TABLE EIGHT
RESPONDENT SOCIABILITY**

Know Names of Neighbors

None	33	8.3%
Some	141	35.4%
All	224	56.3%

Social Scale

1	4	1.0%
2	6	1.5%
3	17	4.3%
4	19	4.8%
5	72	18.1%
6	40	10.1%
7	49	12.2%
8	85	21.4%
9	24	6.0%
10	81	20.4%

Mean on Social Scale = 7.03

Knowledge of Fair Housing Laws and Fair Housing Issues

The respondents were asked how much they knew about fair housing laws and how much they knew about fair housing issues in their community. They were asked to answer each of these questions using a scale of 1 to 10 where 1 indicated not much and 10 indicated a lot. Table Nine summarizes the answers to these questions. Table Nine shows that respondents, in general, do not think they know much about fair housing laws or local fair housing issues. Scores on local issues were slightly higher (mean = 3.48) than scores on laws (mean = 3.16)

TABLE NINE
SELF-RATED KNOWLEDGE OF FAIR HOUSING

	Know About Fair Housing Laws		Know About Fair Housing Issues	
1	138	34.8%	121	31.3%
2	60	15.2%	52	13.4%
3	49	12.4%	48	12.4%
4	22	5.6%	27	7.0%
5	76	19.2%	69	17.8%
6	11	2.8%	17	4.4%
7	17	4.3%	18	4.7%
8	16	4.0%	23	5.9%
9	4	1.0%	7	1.8%
10	3	.8%	5	1.3%
Mean	3.16		3.48	

The respondents were then asked whether it was illegal to discriminate in housing against persons on the basis of 9 characteristics: race, having a handicapping or disabling condition, religion, sex, age, marital status, having children in the household, sexual orientation, and employment status. These characteristics were presented in random order to each respondent.

Table Ten shows the responses to these questions. The ordering of items in Table Ten is based upon the percentage of respondents indicating that it is illegal to discriminate in housing against people on the basis of each of these characteristics. In addition to the percentage of people answering yes to each items, Table Ten also displays the percentage of respondents saying no and the percentage of respondents who said they did not know whether discrimination on the basis of the characteristic was illegal

TABLE TEN
RESPONDENTS' OPINION OF DISCRIMINATION ILLEGALITY

	Yes		No		Don't Know	
Race	364	90.3%	16	4.0%	23	5.7%
Handicap	355	88.1%	16	4.0%	32	7.9%
Religion	353	87.6%	21	5.2%	29	7.2%
Sex	349	86.6%	24	6.0%	30	7.4%
Age	318	78.9%	33	8.2%	52	12.9%
Marital Status	295	73.2%	54	13.4%	54	13.4%
Children	286	71.0%	56	13.9%	61	15.1%
Sexual Orientation	277	68.7%	60	14.9%	66	16.4%
Employment Status	230	57.1%	84	20.8%	89	22.1%

Table Ten shows that 90.3% of the respondents believed it was illegal to discriminate in housing against people on the basis of race, 88.1% thought it was illegal to discriminate

on the basis of handicapping or disabling condition, 87.6% thought it illegal to discriminate on the basis of religion, and 86.6% thought discrimination illegal on the basis of sex. Seventy-one percent of the respondents believed it was illegal to discriminate in housing on the basis of children in the household.

Next, the respondents were presented with a list of the seven characteristics that it is illegal to discriminate in housing on the basis of in Montana and were asked how necessary they believed laws against housing discrimination were for each of the characteristics. Table Eleven summarizes the responses to these questions. The ordering of items in Table Eleven is based upon the mean score for each item on a 1 to 4 scale where 1 = very unnecessary, 2 = unnecessary, 3 = necessary and 4 = very necessary. Table Eleven shows that laws prohibiting housing discrimination on the basis of handicapping or disabling condition are considered the most necessary while laws against housing discrimination on the basis of sex are considered the least necessary. Laws against housing discrimination on the basis of having children in the household are considered the second most necessary of the 7 characteristics on the basis of which discrimination is illegal. However, the difference in mean necessity scores between the most necessary item (2.98) and the least necessary (2.83) is not very large. The typical respondent finds laws against housing discrimination on the basis of any of the 7 characteristics to be "necessary."

TABLE ELEVEN
PERCEIVED NECESSITY OF DISCRIMINATION LAWS

	Very <u>Unnecessary</u>	<u>Unnecessary</u>	<u>Necessary</u>	Very <u>Necessary</u>	<u>Mean</u>	<u>N</u>
Handicap	6.3%	16.5%	49.9%	27.3%	2.98	363
Children	6.1%	21.3%	47.8%	24.9%	2.91	362
Race	6.8%	21.6%	46.6%	24.9%	2.90	365
Age	6.6%	21.6%	49.0%	22.7%	2.88	361
Marital Status	5.9%	22.9%	49.4%	21.9%	2.87	358
Religion	7.1%	23.9%	44.8%	24.2%	2.86	364
Sex	6.8%	26.0%	44.7%	22.5%	2.83	365

The respondents were presented with the same seven characteristics and were asked how fair they perceived laws which prohibited discrimination on the basis of each. This time the 1 to 4 scale was 1 = very unfair, 2 = unfair, 3 = fair and 4 = very fair. Table Twelve presents the results of these questions and the ordering of items in Table Twelve is based on the mean score on the 1 to 4 fairness scale. Once again, the difference in mean scores between the characteristic rated highest in terms of fairness of anti-discrimination laws, marital status with a mean of 2.98, and the item rated lowest, race, with a mean score of 2.83, is a very small difference. The fairness of laws which make housing discrimination on the basis of having children in the household illegal is ranked toward the middle in terms of fairness. Interestingly, many fewer respondents had an opinion on fairness than did on necessity (the number of respondents answering is in the column headed "N").

Attitudes Toward Living Next Door to Different Types of Households

The respondents were asked how they would feel about living next door to 18 different types of households. For each type of household, respondents were asked to respond on a 1 to 10 scale where 1 indicated not at all liking living next door to and 10 indicated liking very much to live next door to. Table Fourteen summarizes the mean scores received by each household type on the 1 to 10 scale. Table Fourteen shows the most preferred neighbor to be an elderly white couple with no children (8.90) followed by a middle aged white couple with no children (8.78) then a single white woman (8.45) and a single white male (8.44). At the opposite end of the scale, the least desirable next door neighbors were either a male or female gay or lesbian couple. The criteria distinguishing between household types in the list presented to respondents are: sexual orientation, college student status, number of children (including no children), age of children, age of adults, and ethnicity of household. Table Fourteen shows that in determining undesirable neighbors, sexual orientation and college student status are the most important criteria.

Setting aside sexual orientation and college student status, the most important determinant of a desirable neighbor is not having children. Elderly people are more desirable as neighbors than are middle aged people. Younger children are more desirable than are teenagers. Two children are more desirable than four children.

TABLE FOURTEEN
FEEL ABOUT LIVING NEXT DOOR TO

Elderly White Couple with No Children	8.90
Middle Age White Couple with No Children	8.78
Single White Woman	8.56
Single White Man	8.45
Young White Couple with Two Young Children	8.44
White Grandparents with Two Grandchildren	8.01
Hispanic Couple with Two Young Children	7.98
Single White Woman with Two Young Children	7.97
Single White Man with Two Young Children	7.95
Black Couple with Two Young Children	7.95
Native American Couple with Two Young Children	7.92
White Married Couple with Two Teenage Daughters	7.75
White Married Couple with Four Young Children	7.75
White Married Couple with Two Teenage Sons	7.59
Two Single Female College Students	7.33
Two Single White Male College Students	7.11
White Female Lesbian Couple	5.80
White Gay Male Couple	5.76

Attitudes About Children

The respondents were presented with a series of 7 statements about parents and their children that were drawn from previous work by Harry and Virginia Benson (Benson and Benson). The 7 statements were:

- Children cause high maintenance costs
- Children vandalize property
- Children use abusive language
- Children are usually unsupervised
- Neighbors are abusive in making complaints about children
- Teenagers are threatening
- Parents cannot control their teenage children

The respondents were asked to respond to these items using the response categories: Strongly Disagree, Disagree, Neutral, Agree and Strongly Agree. In computing the mean score for each of these statements, a 1 to 5 scale was used with the above responses where 1 = Strongly Disagree and 5 = Strongly Agree. Table Fifteen summarizes the answers to these questions. The order of statements in Table Fifteen is based upon the mean score for each statement.

Table Fifteen shows that the respondents did not indicate much agreement with any of the items. The highest mean score on these statement is for the statement that children use abusive language followed by the statement that children cause high maintenance cost. The lowest score, thereby indicating the least agreement, was for the statement that teenagers are threatening.

TABLE FIFTEEN
SOME NEGATIVE ATTITUDES ABOUT CHILDREN

	Strongly <u>Disagree</u>	<u>Disagree</u>	<u>Neutral</u>	<u>Agree</u>	Strongly <u>Agree</u>	<u>Mean</u>	<u>N</u>
Children's Language	3.6%	33.3%	21.1%	37.7%	4.3%	3.06	393
Children Maint. Cost	4.5%	38.0%	24.6%	29.1%	3.7%	2.90	374
Can't Control TA	3.0%	41.7%	24.7%	27.2%	2.8%	2.84	393
Children Vandalize	4.1%	52.5%	21.2%	28.5%	3.4%	2.84	386
Children Unsupervised	3.1%	47.8%	21.2%	24.6%	3.3%	2.77	391
Neigh Abusive-Child	2.2%	53.3%	26.8%	17.2%	.5%	2.61	366
Teenagers Threaten	3.8%	61.9%	19.0%	12.9%	2.3%	2.48	394

The respondents were also asked how much they like being around children under 5, children from 6 to 10, children from 11 to 15 and children from 16 to 18. In answering these questions, they were asked to use a scale of 1 to 10 where 1 meant they liked being around the children not at all and 10 meant very much. Table Sixteen summarizes the results of these questions. Table Sixteen generally shows that respondents liked children. Based upon the mean scores, respondents preferred the company of children from 6 - 10

(8.14), then under 5 (8.07), then children from 11 - 15 (7.92) and children from 16 -18 (7.78).

**TABLE SIXTEEN
LIKE BEING AROUND CHILDREN**

	<u>Under 5</u>	<u>6 - 10</u>	<u>11 - 15</u>	<u>16 - 18</u>
1	3.8%	2.8%	2.0%	3.0%
2	1.3%	.5%	.8%	1.5%
3	2.5%	2.0%	1.5%	3.0%
4	1.0%	2.0%	2.8%	2.0%
5	12.2%	11.4%	11.2%	11.2%
6	2.0%	2.5%	6.1%	6.3%
7	6.3%	7.6%	10.9%	7.9%
8	15.9%	17.2%	18.3%	18.8%
9	5.6%	6.3%	6.1%	6.3%
10	49.4%	47.6%	40.2%	39.8%
Mean	8.07	8.14	7.92	7.78

Rights and Entitlements

The respondents were presented with 7 statements regarding housing discrimination, housing rights and the rights of mothers and children. These statements were taken from previous work by Jeannette Diaz-Veizades, Keith Widman, Todd Little and Katherine Gibbs (Diaz-Veizades, et al.). The 7 statements were:

- Mothers and children are entitled to special care and assistance
- People are entitled to have the food, housing, and medical care necessary to maintain their health and well being.
- Everyone should have the right to adequate housing.
- All persons should have protection against housing discrimination.
- People have the right to housing if they lose their means for making a living due to circumstances beyond their control.
- If a person does not make enough money to obtain adequate housing for his or her family, they should be aided by the government.
- All children, even those born out of wedlock, should enjoy the right to adequate housing.

The respondents were asked to respond to each statement with the 1 to 5 disagreement - agreement scale mentioned above. Table Seventeen summarizes the level of respondent agreement or disagreement with each one of these statements. The ordering of statements in Table Seventeen is based on the mean score for each item on the 1 to 5 scale. Respondents did not disagree with any of these statements. The respondents show the highest level of agreement with four of the statements: that all persons should have protection from housing discrimination, the everyone should have the right to adequate

housing, that all children, even those born out of wedlock, should enjoy the right to adequate housing, and that people have the right to housing if they lose their means for making a living due to circumstances beyond their control.

TABLE SEVENTEEN
SOME ATTITUDES ABOUT RIGHTS AND ENTITLEMENTS

	Strongly <u>Disagree</u>	<u>Disagree</u>	<u>Neutral</u>	<u>Agree</u>	Strongly <u>Agree</u>	<u>Mean</u>	<u>N</u>
No Discrimination	1.5%	3.5%	6.1%	76.0%	12.9%	3.95	396
Right to Housing	.8%	6.1%	7.8%	73.2%	12.1%	3.90	396
Children Housing Right	1.5%	4.1%	8.2%	76.0%	10.2%	3.89	391
Housing if Lose Means	0.0%	8.4%	8.9%	71.7%	11.0%	3.85	392
Food, Housing	1.5%	11.5%	14.1%	60.6%	12.3%	3.71	391
Housing Aid	6.2%	15.2%	23.5%	49.7%	5.4%	3.30	388
Mother-Children	3.4%	20.9%	24.3%	47.4%	3.9%	3.27	382

Experience With Housing Discrimination

The respondents were asked if they had ever been the victim of housing discrimination. Table Eighteen shows that 27 respondents (6.8%) reported they had been such a victim. The most common basis for the discrimination against these respondents was family status followed by age.

The respondents were also asked if they knew anyone who had been the victim of housing discrimination and as Table Eighteen shows, 13.5% of the respondents said they did know someone who had been victimized. The most common basis for discrimination against respondent's acquaintances was race followed by family status.

TABLE EIGHTEEN
EXPERIENCE WITH HOUSING DISCRIMINATION

Been Discriminated Against

Yes	27	6.8%
No	370	93.2%

Reason For Discrimination

Family Status	5	18.5%
Age	4	14.8%
Race	2	7.4%
Handicap	2	7.4%
Marital Status	2	7.4%
Religion	1	3.7%
Other	11	40.7%

Know Anyone Discriminated Against

Yes	54	13.5%
No	345	86.5%

Reason For Discrimination

Race	15	28.8%
Family	12	23.1%
Age	4	7.7%
Marital Status	2	3.8%
Handicap	1	1.9%
Sex	1	1.9%
Other	17	32.7%
Total	52	100.0%

Classified Advertisements

The respondents were asked if they had read classified advertisements for rental property within the last year. Table Nineteen shows that nearly half the respondents had. These respondents were then asked if they could remember reading any ads that indicated children were unwelcome in the rental unit being advertised. While 62.3% of the respondents who read advertisements indicated they could remember no such ads, 31.9% said they could remember a few and 5.8% said they could remember a lot.

Next respondents were read hypothetical rental advertisements and asked about their interpretation of these advertisements. The first ad presented stated: "apartment for rent, currently white clientele." The respondents were asked if they thought this ad encouraged non-white clients to apply, discouraged non-white clients from applying or neither encouraged or discouraged non-whites from applying. Table Nineteen shows that slightly more than three quarters of the respondents believed that such an ad discourage non whites from applying.

The next ad presented contained the phrase: "apartment for rent, currently elderly clientele. First respondents were asked if they thought this ad was encouraging elderly people to apply, discouraging elderly people from applying, or neither. Table Nineteen shows that 81.6% of the respondents believed the ad was encouraging elderly people to apply.

Next the respondents were asked to reconsider the same ad and were asked if they thought it was encouraging families with children to apply, discouraging families with children from applying, or neither. Slightly more than three quarters of the respondents believed this ad was discouraging families with children from applying.

**TABLE NINETEEN
CLASSIFIED ADVERTISEMENTS**

Read Classifieds for Rental Property in Last Year

Yes	193	48.4%
No	206	51.6%

Advertisements Indicating Children Not Welcome

No	119	62.3%
Yes, a Few	61	31.9%
Yes, a Lot	11	5.8%

Currently White Clientele

Encouraging Non Whites	26	6.5%
Discouraging Non Whites	306	75.9%
Neither	45	11.2%
Don't Know	26	6.5%

Currently Elderly Clientele

Encouraging Elderly	329	81.6%
Discourage Elderly	14	3.5%
Neither	41	10.2%
Don't Know	19	4.7%

Currently Elderly Clientele

Encouraging Families	16	4.0%
Discouraging Families	307	76.2%
Neither	55	13.6%
Don't Know	25	6.2%

Experiences with Neighbors

Table Twenty shows that 35.1% of the respondents reported they had lived next to bad neighbors in the last 5 years. When asked for the most important reason the neighbors in question were bad neighbors, the most frequent answer had to do with the neighbors children (22.9% of those with bad neighbors), followed by noisy adults (21.4%), being inconsiderate (17.6%) and pets (13.7%). Respondents were asked if there were any additional reasons the neighbors in question were bad neighbors. The most frequent answer to this question was inconsiderateness (32.6%) and the neighbor's children (21.4%). In all, 51 respondents (36.4%) of the respondents with bad neighbors reported

children to be the most important or second most important reason they considered the neighbors bad.

TABLE TWENTY NEIGHBORS

Had Bad Neighbors In Last Five Years

Yes	140	35.1%
No	259	64.9%

Most Important Reason They Were Bad Neighbors

Their Children	30	22.9%
Noisy Adults	28	21.4%
Inconsiderate	23	17.6%
Pets	18	13.7%
Alcohol or Drugs	10	7.6%
Unfriendly	8	6.1%
Property Not Kept Up	6	4.6%
Litter	4	3.0%
Criminal Activity	4	3.0%

Other Reasons They Were Bad Neighbors

Inconsiderate	32	32.6%
Children	21	21.4%
Noise	15	15.3%
Property Not Kept Up	7	7.1%
Unfriendly	6	6.1%
Pets	5	5.1%
Alcohol and Drugs	4	4.1%
Criminal Activity	4	4.1%
Litter	3	3.1%
Parking	1	1.0%

Perceptions of the Montana Human Rights Commission

Table Twenty-one shows that 63% of the respondents said they had heard of the Montana Human Rights Commission. These respondents were then asked to rate the worthwhileness of the Montana Human Rights Commission on a 1 to 10 scale where 1 indicated not worthwhile at all and 10 indicated very worthwhile. Table Twenty-one shows a mean rating of 6.5. About 10% of the respondents who had heard of the Human Rights Commission rated the Commission as only a 1 or 2 on worthwhileness while 25% rated the Commission as a 9 or 10 on worthwhileness.

**TABLE TWENTY-ONE
MONTANA HUMAN RIGHTS COMMISSION**

Heard of Montana Human Rights Commission

Yes	254	63.0%
No	132	32.8%
Don't Know	17	4.2%

Worthwhileness of Montana Human Rights Commission

1	15	7.9%
2	5	2.6%
3	4	2.1%
4	8	4.2%
5	45	23.6%
6	11	5.8%
7	27	14.1%
8	28	14.7%
9	12	6.3%
10	36	18.8%
Total	191	100.0%

Mean Worthwhileness = 6.5

Know About Case in Which MHRC Enforced Housing Laws

Yes	45	18.1%
No	203	81.9%

How Necessary Was This Enforcement

Not Necessary	9	23.7%
Somewhat Necessary	3	7.5%
Necessary	7	18.4%
Very Necessary	19	50.0%

How Fairly Was This Enforcement Handled

Very Unfairly	1	2.6%
Unfairly	7	18.4%
Mixed	4	10.5%
Fairly	14	36.8%
Very Fairly	12	31.6%

Know About Case in Which MHRC Enforced Employment Laws

Yes	42	16.9%
No	207	83.1%

How Fairly Was This Enforcement Handled

Very Unfairly	1	2.9%
Unfairly	6	17.6%
Mixed	7	20.6%
Fairly	14	41.2%
Very Fairly	6	17.6%

The respondents who had heard of the Commission were asked if they knew about any case in which the Commission enforced housing laws. Forty five respondents (18.1% of those who had heard of the Commission and 11.2% of all respondents reported they knew of such a case. These respondents were then asked how necessary they felt this enforcement was. Table Twenty-one shows that 50% of these respondents thought the enforcement was very necessary and another 18.4% thought it was necessary. These respondents were then asked how fairly they believed the enforcement was handled. Thirty-two percent of these respondents thought the enforcement of housing laws by the Commission was handled very fairly and 36.8% thought it was handled fairly.

The respondents who had heard of the Commission were then asked if they knew of any cases where the Commission had enforced employment laws and 42 respondents said they did now of such cases. These respondents were then asked how fairly the employment law enforcement had been handled. Table Twenty-one shows that 41.2% thought they had been handled fairly while another 17.6% thought they had been handled very fairly.

ANALYSIS

Overall Attitude Toward Children Scale

A major purpose of this study was to determine if different types of people hold different attitudes toward children. In order to make this determination, a composite dependent variable was created which included nearly all of the questions regarding attitudes toward children asked on the survey. The composite dependent variable, known as the Overall Attitude Toward Children Scale (OATCS) was created as follows.

First, a mean score for each respondent was computed on the questions that asked the respondent how much they would like living next door to households which included children. Since these questions were answered with a 1 to 10 scale, this mean was divided by two. This index was the first component of the OATCS. The higher the score on this component, the more the respondent reported they would like to live next to the different household units presented which included children.

Next, the 7 items drawn from the previous work of Benson and Benson were reversed scored so that the higher the score on each item, the more pro-child the answer was. Then a mean score on these seven items was computed for each respondent. This was the second component of the OATCS. The higher the score on this index, the more the respondent disagreed with the statements as presented.

Next, a mean score was computed for each respondent on the four questions asking how much the respondent liked being around children of different ages. Since these questions were answered with a 1 to 10 scale, the mean for these four questions was divided by two to make it consistent with 1 to 5 scales. This index was the third component of the OATCS. The higher the score on this index, the more the respondent reported liking to be around children.

Finally a mean was computed for each respondent on: the question asking for the respondent's opinion of the necessity of laws prohibiting housing discrimination against families with children, the question asking the respondent for their opinion the fairness of laws prohibiting housing discrimination against families with children, and the question regarding children's rights to housing from the previous work by Diaz-Veizades, et al. This index was the fourth component of the OATCS. The higher the score on this index, the more the respondent supported a child's right to housing.

The OATCS was computed as the mean of the four components just described. The composite variable OATCS had a range of 1.11 to 4.67. The mean of the OATC was 3.62, the median was 3.74, the standard deviation was .599 and the standard error of the mean was .030. Table Twenty Two summarizes the distribution of the values on the OATCS.

**TABLE TWENTY-TWO
DISTRIBUTION OF THE VALUES OF THE
OVERALL ATTITUDE TOWARD CHILDREN SCALE**

2.5 or less	19	4.8%
2.51 to 2.75	20	5.0%
2.76 to 3.00	28	7.1%
3.01 to 3.25	35	8.8%
3.26 to 3.50	42	10.6%
3.51 to 3.75	58	14.6%
3.76 to 4.00	77	19.4%
Over 4.00	118	29.7%

Mean Score on OATCS = 3.53

Statistically Significant Bivariate Relationships with the OATCS

Bivariate analysis was conducted to determine whether or not statistically significant relationships existed between the composite index, OATCS and selected independent variables.

Females score significantly higher ($p = .000$) on the OATCS (3.73) than males (3.50).

A significant relationship ($p = .0064$) was also found between the score on the OATCS and the response to the question regarding knowing the names of one's neighbors. Respondents who did not know any of the names of their neighbors averaged 3.61 on the OATCS while those who knew a few of the names averaged 3.50 and those who knew the names of all their neighbors averaged 3.70.

A significant relationship ($p = .032$) was found between score on the OATCS and whether or not the respondent knew anyone who had been discriminated against. Respondents who had known someone who was the victim of discrimination scored 3.78 on the OATCS while those who had not known a discrimination victim scored 3.59.

A significant relationship ($p = .005$) was found between score on the OATCS and whether or not the respondent reported having had bad neighbors in the last 5 years. Respondents with bad neighbors scored 3.51 on the scale while those without bad neighbors scored 3.68.

A respondents score on the OATCS was also found to be significantly correlated with their response to the question about childhood happiness ($r = .2728$, $p < .01$), with their score on the social scale ($r = .2693$, $p < .01$), the number of people in the respondents household ($r = .2413$, $p < .01$) and their opinion of the worthwhileness of the Montana Human Rights Commission ($r = .3150$, $p < .01$). A significant correlation was also found between score on the OATCS and number of siblings ($r = .0995$, $p < .05$) and age ($r = -.1109$, $p < .05$).

Statistically Significant Bivariate Relationships with the Components of the OATCS

First Component

The first component of the OATCS was, as outlined above, constructed from the series of questions asking the respondents how much they would like living next door to different types of household. To construct the first component a mean score was computed for each of the households that included children. Since these items were answered with a 1 to 10 scale, this score was then divided by 2 in order to make it consistent with other 1 to 5 scores included in the OATCS. The higher a respondent scored on this component, the more they liked living next to household which included children

A statistically significant ($p = .001$) relationship was found to exist between a respondents score on this first component and the respondent's sex. The mean score for females on the first component was 4.13 while the mean score for males was 3.79.

A statistically significant ($p = .002$) relationship was found between the respondents' scores on the first component and whether or not the respondent reported having had bad neighbors within the last 5 years. Respondents reporting bad neighbors had a mean score of 3.74 on this scale while respondents without bad neighbors had a mean score of 4.08.

The respondents' scores on the first component was significantly correlated with their score on childhood happiness ($r = .2104$, $p < .01$), and with their score on the social scale ($r = .2944$, $p < .01$). Somewhat lower but still statistically significant correlations were found between scores on the first component and the number of people in the respondents' households ($r = .1273$, $p < .05$), and between score on the first component

and the respondents' opinions of the worthwhileness of the Montana Human Rights Commission ($r = .1503$, $p < .05$).

Second Component

The second component of the OATCS was constructed from the scale taken from previous work by Benson and Benson. The seven items in the scale suggest ways that children damage property and make for unpleasant neighbors. The items were reverse coded so that the higher the score the more the respondent disagreed with the item and disagreement indicates a pro children attitude. The second component is the mean score on these reverse coded 7 items.

Females scored statistically significantly ($p = .001$) higher (3.31) on the second component than did males (3.10).

Respondents living in the western part of Montana scored statistically significantly ($p = .017$) higher (3.28) on the second component than did respondents from the eastern part of the state (3.13).

Respondents with bad neighbors score statistically significantly ($p = .007$) lower (3.09) on the second component than did respondents not reporting bad neighbors (3.27)

Respondents who had heard of the Montana Human Rights Commission scored statistically significantly ($p = .01$) higher (3.28) on the second component than did respondents who had not heard of the Commission (3.10).

Score on the second component was statistically significantly correlated with the respondents score on the question about childhood happiness ($r = .2164$, $p < .01$), with the respondents educational attainment ($r = .1811$, $p < .01$), with the number of people in the respondents household ($r = .1902$, $p < .05$), and with the respondents' perception of the worthwhileness of the Montana Human Rights Commission ($r = .2433$, $p < .01$).

A statistically significant relationship ($p = .0001$) was also found between the second component and the respondents answer to the question regarding knowledge of neighbors' names. Respondents who did not know any of their neighbors' names scored 2.94 on the second component, respondents who knew some of their neighbors' names scored 3.08 and respondents who knew all of their neighbors' names scored 3.32.

Respondents who believed the phrase "currently white clientele" in an advertisement discouraged non whites from applying for an apartment scored statistically significantly (.0345) higher on the second component than did other respondents. Similarly, respondents who believed the phrase "currently elderly clientele" encouraged elderly people to apply for an apartment scored statistically significantly ($p = .0145$) higher on the second component than did other respondents.

Third Component

The third component of the OATCS was constructed from the four questions asking respondents how much they liked being around children in different age groups. Since these questions were answered with a 1 to 10 scale, the third component was computed by taking the mean score on these four items and then dividing that mean score by 2. The higher the score on the third component the more the respondent reported they liked being around children.

Females score statistically significantly ($p = .008$) higher (4.13) on the third component than did males (3.84).

Respondents reporting bad neighbors within the last 5 years scored significantly lower (3.84) on the third component than did respondents with no bad neighbors (4.07).

Respondents who had heard of the Montana Human Rights Commission scored statistically significantly ($p = .033$) higher (4.08) on the third component than did respondents who had not heard of the Commission (3.83).

Score on the third component was statistically significantly correlated with the respondents reported childhood happiness ($r = .2517$, $p < .01$), the social scale ($r = .2683$, $p < .01$), and the number of people in the respondents' household ($r = .2734$, $p < .01$). A somewhat less but still statistically significant correlation, was found between score on the third component and the number of children the respondent reported having ($r = .1445$, $p < .05$) and the respondents age ($r = -.1062$, $p < .05$). It should be noted that last correlation was a negative correlation, meaning the older the respondent the lower they scored on the third component.

Respondents who knew all their neighbors' names scored statistically significantly ($p = .0131$) higher (4.11) on this scale than did other respondents. However, those who knew a few of their neighbors' names score the lowest (3.77), while respondents who did not know any of their neighbors' names scored 4.07.

Fourth Component

The fourth component of the OATCS was constructed from the answers to three questions: the questions about the necessity of laws prohibiting the housing discrimination against families with children, the fairness of these laws, and a statement about the rights of children to adequate housing. The higher the score on the fourth component the more the respondent supported the rights of children to housing.

Score on the fourth component was found to be statistically significantly correlated with age ($r = -.1310$, $p < .01$) and with the respondents' perception of the worthwhileness of the Montana Human Rights Commission ($r = .4341$, $p < .01$). The relationship to age is an inverse relationship, the younger the respondent, the higher the score on the fourth component.

Democrats scored statistically significantly ($p = .0013$) higher (3.48) on the fourth component than do Independents (3.36) or Republican (3.22).

Respondents who believe the phrase "currently elderly clientele" encourages elderly clients to apply scored statistically significantly higher on the fourth component than did others respondents.

Statistically Significant Relationships with Respondents' Perception of the Worthwhileness of the Montana Human Rights Commission

In addition to the statistically significant relationships between all four components of the OATSC as well as the OATCS and the respondents opinion of the worthwhileness of the Montana Hunan Rights Commission just mentioned, opinion of the worthwhileness of the Commission was also statistically significantly related to the respondents sex (.040) where females have a mean score of 6.89, males of 6.10) the number of children in the

respondents' households ($p = -.2153$, $p < .01$), age ($r = -.1550$, $p < .05$), and political party ($p = .000$) where Republicans rate the Commission a mean of 5.40, Democrats a mean of 7.68 and Independents a mean of 6.39. It is important to note the relationships between opinion of the worthwhileness of the Commission and the number of children in the household, as well as age, are negative. The fewer children and the younger the respondent, the higher the opinion of the worthwhileness of the Commission.

Predicting Negative Attitudes Toward Children and Support of Fair Housing: Further Analysis of the Bensen and Bensen Disapproval Scale and the Diaz-Veizades et al. Support of Fair Housing Scale

Earlier in this report several factors were included in a general measure of the role of children in citizens' attitudes about fair housing. We now turn to two specific dimensions. In the telephone survey we adapted items from a scale measuring dislike and distrust of children (Bensen and Bensen) and another scale measuring support for the housing rights of families with children (Diaz-Veizades *et al.*) Each of these scales has desirable scale qualities. That is, they represent single dimensions (as indicated by factor analysis--the seven items of each scale explain approximately 50 percent of their respective variance) and the items of each scale are statistically consistent (with alpha coefficients of approximately .80).

Multiple regression analysis, a powerful statistical tool that can be used to establish the relative importance of a series of factors for predicting some outcome of interest, was used to predict the values of each scale from a set of plausible independent or predictor variables: sex, income, age, childhood happiness, reporting of bad neighbors, knowledge of neighbors names, preference for living next door to a Native American Family with 2 children, preference for living next door to a childless elderly couple, whether or not the respondent had owned rental property, had managed rental property, and support for human rights. In addition, score on the Disapproval of Children Scale was used as a predictor in the regression done on the Support for Fair Housing Scale and score on the Fair Housing Scale was used as a predictor in the regression done on the Disapproval for Children Scale.

The results are shown below in Table Twenty-two where factors associated with negative attitudes toward children are shown in columns 2 and 3 and those associated with support for fair housing for children are shown in columns 4 and 5 (column 1 identifies the factors employed). In each case the first of the pair of columns shows the standardized regression coefficient--a measure ranging from zero to one indicating the relative importance of each factor for the dimension under consideration (negative attitudes toward children and support for fair housing for families). It should be understood that this "relative importance" represents the "unique effect" of each factor after it is statistically adjusted for the relationships it has to other factors. The larger the coefficient ("standardized beta" in Table 1), the more important the factor. A useful way to think of the "relative importance" is the "rate of change" in the criterion dimension (negative attitudes toward children or support for fair housing for families) associated with change in each factor. The coefficients also have a sign which indicated the direction of the relationship for each factor.

For example, as shown in Table 1 age is positively related to dislike for children (coefficient=.126). This means that the older the person, the greater the dislike of children. In contrast, knowing the names of one's neighbors is negatively related to dislike of children. That is, the less likely one knows one's neighbors' names, the more negative one's attitude toward children.

TABLE TWENTY-TWO
REGRESSION RESULTS FOR DISAPPROVAL OF CHILDREN AND SUPPORT
FOR FAIR HOUSING

Predictor Variables	Predicting Dislike for Children		Predicting Support of Fair Housing	
	Stand Beta	Prob.	Stand. Beta	Prob.
Sex	-.149	.001	.031	.602
Income	-.151	.005	-.090	.091
Age	.126	.027	.096	.114
Childhood Happiness	-.113	.036	.084	.146
Had Bad Neighbors	.082	.128	.037	.524
Neighbor's Names	-.228	.001	-.111	.067
Native Amer. Family	-.363	.001	.346	.001
Childless, Elderly Couple	.194	.001	-.184	.001
Owned Rentals	.040	.529	-.226	.001
Managed Rentals	-.048	.445	.117	.082
Fair Housing Support	-.063	.273	NA	NA
Disapproval of Children	NA	NA	-.072	.273
R ²	.31		.22	
N	275		275	

The second of each pair of columns shows the statistical significance of the regression coefficients. By convention, a coefficient with a probability of .05 or lower is statistically significant. Statistical significance can be taken to mean that the result, here a coefficient, is unlikely to have occurred by chance--it is an "uncommon" outcome.

As shown in Table Twenty-two, by the R² statistic, taken together, the set of variables employed account for a significant amount of variance in each of the scales: 31% for negative attitudes toward children and 22% in the case of support for fair housing. However, not all predictor variables are equally important. Moreover, different variables are important for each of the two scales.

In the case of negative attitudes toward children, experiences like having had bad neighbors or owning or managing rental property are relatively unimportant. One's attitude toward fair housing is likewise not a factor in attitudes toward children. However, those with negative attitudes toward children tend to be male, have low incomes, are older persons, report unhappy childhoods, and do not know the names of many neighbors. As well, they express preference for having an elderly white childless

couple for neighbors and a "dispreference" for a Native American Indian family with two children.

Turning to support for fair housing, a different pattern is seen. Owning rental property is negatively related to support for fair housing; i.e., those with rental property are less supportive of fair housing for families than those owning no rental property. Those who support fair housing are likely to value having an Indian family with children for neighbors and less likely to desire an elderly, childless, white couple.

SUMMARY

Half of the 403 respondents to this survey were male and half were female. Ninety-two percent of the respondents were white and the mean age was 46.3. Sixty-five percent of the respondents were currently married, 14.7% were single and had never been married, 10% were divorced and 6.7% were widowed. The mean number of children reported by respondents was 2.03 while the mean household size was 2.61. About one fifth of the respondents reported a household income before taxes of \$15,000 or less while 31.1% reported a household income between \$15,001 and \$30,000 and 15.2% reported incomes in excess of \$50,000.

The mean educational attainment was 13.7 years. One third of the respondents indicated they were Republican, 28.1% said they were Democrats and 38.7% said they were independent. When pushed, the 19.3% of the independents indicated they leaned toward being Republican, 23.6% leaned toward being Democrats, and 57.1% of those who said they were Independent claimed they neither leaned toward being a Republican or a Democrat.

Seventy-percent of the respondents either owned or were buying a home their home, while slightly more than one quarter were renting their residence. The mean number of years in current residence was 10.8, but 52.1% of the respondents had been in their current residence for less than 5 years and 27.8% had been in their current residence for less than 2 years.

Thirty percent of the respondents had grown up as eldest children while 28.4% were youngest children, 34.4% were middle children and 7% were only children. About one quarter of the respondents reported having two siblings, one fifth reported one sibling, 16.5% reported three siblings and 30% had four or more siblings.

When asked to rate the happiness of their childhood on a 1 to 10 scale from not happy at all to very happy, the mean rating was 8.06 and nearly 43% answered with a 10 rating.

Slightly more than one quarter of the respondents reported they did or had owned rental property and about three quarters of those respondents reported only owning one or two units. Twenty-one percent of the respondents did or had managed rental property and 28% reported managing more than 5 units. Only 11 respondents were or had been licensed to sell real estate.

Fifty-six percent of the respondents knew all the names of their neighbors, while 35.4% knew some of the names of their neighbors, and 8.3% reported they did not know the names of any of their neighbors. When asked how social they were on a 1 to 10 scale from not social at all to very social, the mean score was 7.03 and nearly one fifth answered with a 10.

Generally respondents did not consider themselves knowledgeable about fair housing laws (3.16 on a 1 to 10 scale) or local fair housing issues (3.48 on a 1 to 10 scale).

The respondents were asked if it was illegal to discriminate in housing against people on the basis of race, a handicapping condition, religion, sex, age, marital status, children in the household, sexual orientation, or employment status. The percentage of respondents answering yes ranged from 90.3% for race and 88.1% for handicapping condition to 57.1% for employment status and 68.7% for sexual orientation. Seventy-one percent of the respondents believed it was illegal to discriminate against families with children when renting or selling homes. In terms of the percentage of respondents saying a characteristic made housing discrimination illegal, families with children was 6th out of 9, just above sexual orientation.

Respondents were asked to rate the necessity laws preventing housing discrimination on the basis of race, handicapping condition, religion, sex, age, marital status and having children within a household. The percentage of respondents indicating the laws were either necessary or very necessary ranged from 77.2% for handicapping condition and 72.7% for families with children to 67.2% for sex and 69% for religion. The percentage of respondents who found these laws to be fair or very fair ranged from 89.9% for marital status and 88.2% for religion to 79.9% for race, 80.4% for handicapping status and 83.2% for families with children.

The respondents were asked how well each of these laws worked. The percentage of respondents saying they worked well ranged from 54.5% for sex and 53.4% for religion to 44.1% for race, 44.6% for handicapping condition and 46.8% for families with children.

The respondents were asked to use a 10 point scale where 1 was not at all liking and 10 was liking very much to indicate how much they would like to live next door to 18 different types of household. At the bottom end of the scale, indicating the least desired neighbors, were homosexual couples and college students. At the top end of the scale, indicating the most desirable neighbors were white people without children. Setting aside sexual orientation and college students status, the most important criteria of desirable neighbors was not having children.

When presented with a list of seven problems that might be associated with living near children and teenagers and ask to express their level of agreement or disagreement that the potential problems mentioned were actually problems, most respondents remained neutral. A statement that children use abusive language received the highest level of agreement, while respondents disagreed that teenagers were threatening.

When asked how much they liked to be around children under 5, from 6 to 10, from 11 to 15 and from 16 to 18, using a scale of 1 to 5, the highest mean (8.14) went to children from 6 to 10, the next highest (8.07) to children under 5, then 7.92 for children from 11 to 15 and 7.78 for children from 16 to 18. Nearly 50% of the respondents answered with a 10 for children under 5.

Respondents tended to agree that all persons should have protection against housing discrimination (3.95 on 1 to 5 scale of agreement where 3 is neutral), that everyone should have the right to adequate housing (3.90), that children, even those born out of wedlock, have the right to housing (3.89, that people have the right to housing if they lose their means for making a living due to circumstances beyond their control (3.85), and that

people are entitled to have food, housing and medical care necessary to maintain their health and well being (3.71).

About 7% of the respondents indicated they had been victims of housing discrimination and the most common reason for discrimination was family status. Thirteen percent of the respondents said they knew someone who had been discriminated against in housing and the most common reasons were race and family status.

About half the respondents said they had read advertisements for rental property within the last year. About 32% of those said they could remember reading a few ads indicating children were not welcome while 5.8% remembered a lot of ads indicating children were not welcome.

When presented with the partial text for an advertisement for a rental apartment that included the phrase "currently white clientele", about three quarters of the respondents believed that the ad would discourage non-whites from applying. When presented with an add that included the phrase currently elderly clientele, 81.6% thought the ad would encourage elderly people to apply and 76.2% thought the same ad would discourage family with children from applying.

Thirty-five percent of the respondents reported they had experienced bad neighbors within the last 5 years. The most frequently cited most important reason for the bad neighbor label and the second most often mentioned other reason for the bad neighbor label involved the neighbors' children.

Sixty-three percent of the respondents had heard of the Montana Human Rights Commission. Those respondents were asked to rate the worthwhileness of the Commission on a 1 to 10 scale and the mean rating was 6.5 and 40% answered with an 8, 9 or 10. Eighteen percent of the respondents who had heard of the Commission knew of a case involving the Commission's enforcement of housing laws. Sixty-eight percent of those who knew about such a case believed the enforcement was either necessary or very necessary and sixty eight percent thought the enforcement was handled fairly or very fairly. Seventeen percent of the respondents who had heard about the Commission knew about a case involving the Commission's enforcement of employment laws. Fifty-nine percent of these respondents thought the enforcement was handed fairly or very fairly.

A composite variable representing the respondents' overall attitude toward children was created from questions on the survey involving opinions about children, laws about children and children's rights. This variable called the Overall Attitude Toward Children Scale (OATCS) was created from four components. The first component was the mean score divided by 2 on questions about liking living next door to households with children. The second component was the mean score on the 7 reversed scored items from the Benson and Benson Scale. The third component was the mean score divided by two on the four questions asking respondents how much they liked being around children of 4 different ages. The fourth component was the mean score on the questions about necessity of laws prohibiting housing discrimination against families with children, about the fairness of these laws and about children's right to housing. The OATCS was computed as the mean of these four components.

The scores on the OATCS ranged from 1.11 to 4.67 with a mean of 3.62, a median of 3.74 and a standard deviation of .599. The following statistically significant bivariate relationships were found between the OATCS and other variables:

- Women scored statistically higher on this scale than men.
- Respondents who knew none of their neighbors' names or all of their neighbors' names scored higher on the OATCS than did respondents who knew some of their neighbors' names.
- Respondents who had known someone who was a victim of housing discrimination scored higher on the OATCS than did those who had not known a victim.
- Respondents who indicated they had experienced bad neighbors within the last five year scored lower on the OATCS than did respondents who had not experienced bad neighbors.
- The higher respondents' score on the childhood happiness question the higher their score on the OATCS.
- The higher respondents' score on the sociability question, the higher their score on the OATCS.
- The more people in the respondents' household, the higher the score on the OATCS.
- The more worthwhile the respondents perceived the Montana Human Rights Commission, the higher their scores on the OATCS.
- The more siblings respondents reported, the higher their scores on the OATCS.
- The older a respondent, the lower his or her score on the OATCS.

The following statistically significant relationships were found between the first component of the OATCS and other variables:

- Females scored higher on the first component than did males.
- Respondents reporting bad neighbors within the last 5 years scored lower on the first component than did other respondents.
- The higher the childhood happiness score the higher the score on the first component.
- The higher the score on the sociability scale, the higher the score on the first component.
- The more people in the household, the higher the score on the first component.
- The more worthwhile the respondent felt the Montana Human Rights Commission to be, the higher the score on the first component.

The following statistically significant bivariate relationships were found between the second component and other variables:

- Females score higher on the second component than did males.
- Respondents living in Western Montana score higher than those from Eastern Montana.
- Respondents reporting bad neighbors scored lower than did respondents without bad neighbors.
- Respondents who had heard of the Montana Human Rights Commission scored higher than respondents who had not heard of the Commission.
- The higher childhood happiness, the higher the score on the second component.

- The higher the respondents' educational attainment, the higher the score on the second component.
- The more people in the household, the higher the score on the second component.
- The more worthwhile the respondent thought the Commission to be, the higher the score on the second component.
- Respondents who knew the names of no neighbors scored lowest on the second component, respondents who knew some names scored in the middle and respondents who knew all their neighbor's names scored highest.
- Respondents who believed the phrase "currently white clientele" in an advertisement discouraged non-whites from applying for an apartment scored higher on the second component than did other respondents.
- Respondents who believed the phrase "currently elderly clientele" encouraged elderly people to apply for an apartment higher on the second component than did other respondents.

The following statistically significant bivariate relationships were found between the third component of the OATCS and other variables:

- The third component of the OATCS was constructed from the 4 questions asking
- Females scored higher on the third component than did males.
- Respondents reporting bad neighbors within the last 5 years scored lower on the third component than did respondents with no bad neighbors.
- Respondents who had heard of the Montana Human Rights Commission scored higher on the third component than did respondents who had not heard of the Commission.
- The higher the childhood happiness score, the higher the score on the third component.
- The higher the score on the sociability scale, the higher the score on the third component
- The more people in the household, the higher the third component score.
- The more children the respondent had, the higher the score on the third component.
- The older the respondent, the lower their score on the third component.
- Respondents who knew all their neighbors' names scored higher on this scale than did other respondents. However, those who knew a few of their neighbors' names scored the lowest, while respondents who did not know any of their neighbors' names scored in the middle

The following statistically significant bivariate relationships were found between score on the fourth component of the OATCS and other variables:

- The older a respondent, the lower their score on the fourth component.
- The more worthwhile the respondent believed the Commission to be, the higher the score on the fourth component.
- Democrats scored highest on the fourth component followed by Independents, then Republican (3.22).

- Respondents who believe the phrase “currently elderly clientele” encourages elderly clients to apply scored higher on the fourth component than did others respondents.

The following statistically significant bivariate relationships, in addition to those already noted above, were found between opinion of the worthwhileness of the Montana Human Rights Commission and other variables:

- Females thought the Montana Human Rights Commission was more worthwhile than did males.
- The more children in the household, the more worthwhile the Commission was considered to be.
- The older the respondent, the less worthwhile the Commission.
- Democrats rate the Commission the most worthwhile followed by independents and then Republicans.

Experiences like having had bad neighbors or owning or managing rental property are relatively unimportant when predicting attitudes toward children as measured by the Bensen and Bensen Disapproval of Children Scale. One’s attitudes toward fair housing is likewise not a factor in attitudes toward children as measured by the Bensen and Bensen scale. Those with negative attitudes toward children tend to be male, have low incomes, are older persons, report unhappy childhoods, and do not know the names of many neighbors. As well, they express preference for having an elderly white childless couple for neighbors, and a “dispreference” for a Native American Indian Family with 2 children.

Owning rental property is negatively related to support for fair housing as measured with the Diaz-Veizades et al. Scale. Those who support fair housing are likely to value having an Indian Family with children for neighbors and less likely to desire an elderly, childless, white couple for neighbors.

CONCLUSIONS

- Generally, respondents did not consider themselves knowledgeable about either fair housing laws or fair housing issues in their local community.
- Seventy-one percent of the respondents believed it was illegal to discriminate against families with children when renting or selling homes. In terms of the percentage of respondents saying a particular characteristic made housing discrimination illegal, families with children was 6th out of 9, just above sexual orientation.
- Most respondents felt that anti-housing discrimination laws based on race, handicapping condition, religion, sex, age, marital status, and having children within a household are necessary laws. Seventy-three percent of the respondents believed that anti-discrimination laws for families with children were necessary or very necessary as compared to 77.2% for handicapping condition and 67.2% for sex.
- Most respondents felt that anti-housing discrimination laws based on race, handicapping condition, religion, sex, age, marital status, and having children within a household are fair laws. Eighty-three percent of the respondents believed that anti-

FAIR HOUSING LAWS

Protecting a Free Housing Market, an Open Community and Individual Rights

One hundred and thirty years ago, the first fair housing law was passed. In 1866, Congress understood that until all citizens were guaranteed the same rights to "inherit, purchase, lease, sell, hold, and convey real and personal property" regardless of race or color or national origin, some badge of slavery would always remain. A century later, our Montana Constitution recognized that guarantee as an inalienable right of a free people...to pursue life's basic necessities, to acquire, possess and protect property, including a decent home and community, without discrimination on account of race, color, sex, social origin or condition, or political or religious ideas.

Today, these laws protect every one of us and our communities. The federal Fair Housing Act and the Montana Human Rights Act protect your right to equal housing opportunities regardless of your race, color, creed, religion, sex, national origin, age or, as recently amended, your marital status, because there are children in your family, or because you have a disability. Housing segregation based on any of those reasons is illegal. Although the laws allow for "housing for older persons," for religious communities and for exemption of the owner-occupied duplex, those are strict exceptions. Equal housing opportunity for all qualified persons is the rule.

Fair housing laws apply to all of us. The person who puts a house on the market, the landlord or manager who has apartments for rent, the bank that offers mortgage loans, the city or town that makes a zoning decision, the newspaper that

sells advertising space, the government agency that administers housing programs - all of us have a duty not to discriminate. It's good business. The alternative is a housing market distorted by prejudices and ignorance, segregated towns and schools and workplaces, and limits on individual opportunities that are based on stereotypes instead of personal merit.

The principles of a free housing market, of open communities, and of each individual's or family's right to acquire and possess property without discrimination are inseparable. These are policies of the highest order, at local, state and national levels. Education about and enforcement of the fair housing laws ensure that those principles and those policies are more than just words.

The Montana Human Rights Commission and your newspaper have joined to provide a series of six (6) public service articles in this space over the next months. The articles concern your rights and responsibilities under state and federal fair housing laws. This is the first in that series.

If you need more information about your equal housing rights or have questions about state or federal fair housing laws, contact the Montana Human Rights Commission at 1-800-542-0807 or write the Commission at Post Office Box 1728, Helena, Montana 59624-1728. You can also contact the U.S. Department of Housing and Urban Development at 1-800-669-9777.

EQUAL HOUSING OPPORTUNITY

Who's Protected by the Fair Housing Laws?

You are. We all are.

Equal Housing Opportunities are guaranteed to every qualified person. That's the law. It doesn't matter what your skin color is, what country you or your great grandparents came from, what your age or gender or marital status is, what your religious beliefs are, whether you have a disability, or whether there are children in your family. If you're qualified to meet the terms of a sale or a lease or a loan or a zoning law or any other kind of realty transaction, then you have the same right as any other qualified person to acquire and use and live in that property.

Those rights aren't just there for consumers, but for all people in the business of real estate. If you respect the fair housing laws and an owner or a lender or an insurance company or a government agency or any one else demands that you ignore your duty not to discriminate, then your business, your livelihood, is protected as well. Even a town or a city has rights under the fair housing laws, to be free from outside efforts to segregate people on an illegal basis or to manipulate the housing market through discrimination.

What does that mean in real life? Cases filed with the Montana Human Rights Commission can give you an idea. The names are changed but the people are real. Mrs. J., an older woman whose eyesight failed her years ago, was pressured into signing away most of the equity in her home. She has a claim under the Human Rights Act based on her disability. Lori, out on

her own and looking for her first apartment, was sexually harassed by the manager when she went alone to see an available unit. She prevailed in her fair housing claim before it even went to hearing. For George, the response from the owner to his request to see a home advertised in the paper was "We don't rent to Negro men." George won his case in federal court after filing it first with the Commission. Dan and Linda were married two years ago and then told to get out of their home because Linda had a 12 year old daughter. They not only won their claim, but stopped an adult-only system of segregation for everyone at the 200 unit housing development. Corporation ABC went to the city for a permit to build a community residence for ten elderly and minimally disabled residents. When the city said no because the neighbors objected to that kind of home, the developer asked about its fair housing rights. Armed with the knowledge that the city also has a duty not to discriminate, the permit request was resubmitted and granted.

The answer to the question "who is protected by the fair housing laws?" is simple. Because we all have a right to be free from illegal discrimination, to do business in a free and open housing market, those laws protect all of us.

This is #2 in a series of 6 public service articles on equal housing rights and responsibilities presented by the Human Rights Commission in cooperation with your newspaper. For copies or for more information, Contact the Montana Human Rights Commission at 1-800-542-0807 or call HUD at 1-800-669-9777.

EXHIBIT C-3

GUIDANCE REGARDING FAIR HOUSING ADVERTISING

Federal and State Fair Housing Laws prohibit advertisements and statements which indicate a preference, limitation or discrimination on the basis of race, color, religion, sex, disability, familial status, age, marital status or national origin.

This prohibition applies to publishers, such as newspapers, multiple listing services and directories, as well as to persons who place the real estate ads.

Generally when publishing real estate ads, if you focus on describing the property rather than the type of person you want as a buyer or renter, you can avoid many pitfalls and avoid turning away good customers. For instance, instead of advertising for 1 or 2 people, describe the size of the premises, square footage or number of rooms. Anytime you state a preference or limitation on the types of people you're looking for, you run the risk of printing a discriminatory ad. Words such as "preferred" or "suitable for" are precursors to limiting or discriminatory language.

The following questions developed by Publisher Associations in other states may assist you in determining whether an advertisement meets the requirements of the Federal Fair Housing Act and Montana Human Rights Act:

1. Are your ads free of words, phrases, symbols or visual aids which imply, indicate or convey a preference or limitation based on race, religion, national origin, sex, disability, age, or marital or family status?

2. Are the directions used in the ads free of reference to any landmark or area which could imply an unlawful discriminatory preference?

3. If the ad contains discounts or promotions, have you eliminated unlawful discriminatory preferences?

4. Have you used the phrase EHO, or other equal opportunity logos, slogans, and statements which indicate that all qualified persons are welcome to apply?

5. Do the ads use models, art and graphics free of unlawful discriminatory practices? Are models representative of people who live in your housing market?

6. Do you think about potential buyers or renters in terms of the color of their skin, how old they are, whether they have kids, what they believe, instead of whether they will meet the terms and conditions of the contract?

7. Are both sexes, children, seniors, persons with disabilities and minorities represented in your photos and graphics?

8. If the advertisement is printed in a publication, has the Publisher included the "Publisher's Equal Opportunity Statement" at the beginning of the housing section? Does it always appear?

9. Are logos, graphics and the like free from discrimination, and are they used in appropriate size in relation to the Fair Housing Opportunity logos?

10. In addition to print advertisements, are all brochures, flyers, in-office materials, business cards, and the like in compliance with law?

* * *

This is #3 in a series of 6 public service articles on equal housing rights and responsibilities presented by the Human Rights Commission in cooperation with your newspaper. For more information about fair housing advertising, call the Commission at 1-800-542-0807 or HUD at 1-800-669-9777.

EXHIBIT C-4

EQUAL HOUSING OPPORTUNITIES FOR PERSONS WITH DISABILITIES

State and Federal fair housing laws assure equal housing opportunities to persons with disabilities. Housing providers (owners, managers and others) have an obligation to make reasonable accommodations and to permit reasonable modifications so a person with a disability has an equal opportunity to use and enjoy the home. You cannot refuse or deny a housing opportunity to a person with a disability on the grounds that the person may request a reasonable accommodation or permission to make a reasonable modification.

The Montana Human Rights Act and the Federal Fair Housing Act define "disability" as a physical or mental impairment that substantially limits one or more major life activities. A major life activity includes being able to take care of yourself, do manual tasks, walk, breath, see, hear, speak, learn and work.

All disabling physical and mental conditions are covered, from speech and hearing disorders to cancer, to mental illness, to alcoholism, to HIV infection, etc. It is illegal to discriminate against these individuals or against others because they associate with people with disabilities.

When people apply for housing, don't ask "are you disabled? It is unlawful to ask questions regarding the existence, nature, or severity of a disability, unless it is necessary to qualify that person for a special government housing unit. These questions are only appropriate if the applicant has asked for or needs a reasonable accommodation or modification.

A reasonable accommodation is an exception to the housing provider's usual rules, policies, practices, or services which is necessary for a person with a disability to be able to qualify for, access, use or enjoy the property.

A reasonable modification is a physical change to a dwelling unit or to a common use area which is needed to allow a person with a disability full access, use or enjoyment of the premises. The person with the disability is responsible for paying for the modification. When the unit is rented, the landlord may reasonably require the tenant to restore the premises to its original condition at the end of the tenancy. Examples of modifications include: allowing a tenant to build a ramp for their child in a wheelchair, install hand bars and other equipment in the unit. Allowing a vision impaired resident to install braille readers at exits and in elevators. Again, the modification need only be reasonable in order to allow full use and enjoyment of the premises.

The Fair Housing Act does not require a housing provider to accept all disabled applicants without regard to their abilities to pay the rent and meet the other terms and conditions of the tenant agreement. Property owners should treat every prospective tenant the same. Generally, if a tenant requires a special accommodation or modification, he or she will ask for it. Owners are required to use the same objective criteria to evaluate the applications of all tenants. The rules may seem difficult sometimes but they are simple in principle. Treat every applicant the same. Be reasonable. Be open to making accommodations so people can have equal opportunity. Don't close the door on people with disabilities. The exact accommodation will depend on the circumstances. The housing provider is not required to go beyond what is reasonable.

This is #4 in a series of six (6) public service articles on equal housing rights and responsibilities presented by your newspaper and the Montana Human Rights Commission. For copies or for more information, call the Commission at 1-800-542-0807 or HUD at 1-800-669-9777.

EQUAL HOUSING RIGHTS OF FAMILIES WITH CHILDREN

Fair Housing Opportunities for Families is Good Public Policy and Good Business

The 1988 federal Fair Housing Act and the Montana Human Rights Act prohibit housing discrimination against families with children under the age of 18. Families cannot be denied the housing of their choice simply because they have children. Protection extends to pregnant women and persons in the process of securing legal custody of children through foster care, adoption, divorce, or written permission from a parent or legal guardian. Families or persons planning to have a family have a right to housing of their choice.

Landlords, property managers, or real estate agents generally will not directly state, "we don't accept children" or "there are no kids allowed." Discrimination against families with children is subtle. The agent may simply refuse to rent to families or tell them the housing is not available when it is. They may refuse to sell, rent or even deal with a person because they have children or they may advertise the housing as available for only certain people (adults only). There may be attempts to discourage families by changing the terms, conditions, services and facilities, for instance different rules, charging additional fees, or applying more burdensome rental criteria, larger deposits, increased water charges, or higher rent based on the number of children. They may impose occupancy standards to prevent children from residing in a development or steer families with children away from adult only areas. All of these practices are illegal, promote segregation and disrupt what should be a free and open housing market.

You should suspect unlawful discrimination, if you hear statements like: "The building is not safe for children;" "We take younger children, but teenagers will disturb the other tenants;" "Sure, we rent to families with kids, but we'll need an extra security deposit;" "Yes, we'll allow children but we'll have to charge more rent for each kid;" "Only 3 people are

allowed in a 2 bedroom apartment;" "Children are only allowed in the basement and first floor units;" "Our kids building [or family section] is full;" "This complex isn't suitable for children, there is no playground or open space for them to play;" "There are no children here, your children won't have anyone to play with;" and "Sorry a parent and child cannot share a bedroom."

To protect the openness of our housing markets and to promote equal housing opportunities for families, discrimination against families with children is illegal in every state in the nation. This policy applies unless the property qualifies as "Housing for Older Persons," a special exemption developed to meet the unique housing needs of our senior citizens. Housing complexes designed for older persons can exclude families with children under the following circumstances: (1) the housing is intended for and solely occupied by persons 62 years of age or older, (2) the housing is intended, operated and occupied by at least one person 55 years of age or older in 80 percent of the units, or (3) the building is a federal or state program that provides housing for elderly people. In Montana, home owners renting up to three sleeping rooms may exclude families with children if the owner resides in the house. Owner-occupants of duplex units may also exclude families with children if they live in one of the units. The duplex exclusion does not apply to any building designed for occupancy by three or more families, or to any building where the owner does not reside.

This is #5 in a series of 6 public service articles on equal housing rights and responsibilities presented by the Human Rights Commission in cooperation with your newspaper. If you suspect your equal housing rights have been violated Commission at 1-800-542-0807/ HUD at 1-800-669-9777.

EXHIBIT C-6

WHAT QUALIFIES AS HOUSING FOR OLDER PERSONS?

Housing for Older Persons is a special exemption developed to meet the unique housing needs of senior citizens. Housing complexes designed for older persons can exclude families with children if: (1) the housing is intended for and solely occupied by persons 62 years of age or older, (2) the housing is intended for, operated and occupied by at least one person 55 years of age or older in 80% percent of the units, or (3) the building is a federal or state program that provides housing for elderly people.

The current law allows housing to be exempt from the age and familial status provisions of the Human Rights Act (Section 49-2-305(10), MCA), if the housing meets the following conditions:

Number 1: At all times, at least 80% of the housing units must be occupied by households with at least one person over the age of 55 who actually resides there (and 80% of any unoccupied units must be reserved for residency by persons 55 years of age or older).

Number 2: The owner or developer or manager of the housing must publish and adhere to written policies and procedures demonstrating that the housing is intended and operated for persons 55 years of age and older, including application procedures, marketing materials, age verification procedures, lease or sale provisions, written rules and regulations, and the actual practices of the owner and manager. Age Verification procedures are mandatory.

Number 3: The housing has significant facilities and services designed to meet the physical and social needs of older persons, such as social and recreational programs, continuing education, information and counseling, recreational, homemaker and outside maintenance services, and referral services, an accessible physical environment, health

care programs, congregate dining facilities, transportation services, and other services designed to encourage residents in using the facilities and services.

In 1995, the federal law was amended to eliminate requirement number 3, significant facilities and services. During the 1997 Legislative Session, a similar amendment to our state law was proposed (House Bill 495) and was signed by Governor Racicot which becomes effective October 1, 1997.

The amended state law will continue to require housing providers to meet the criteria in item numbers 1 and 2 above. However, there is no minimum number of units needed to qualify. Less than five unit complexes require that 100% of the units be occupied by households with at least one person at least 55 years old.

It is important to note that there are some concerns that the housing for older persons exemption may not comply with Art. II, §15 of the Montana Constitution which provides that "The rights of persons under 18 years of age shall include but not be limited to all the fundamental rights...unless specifically precluded by laws which enhance the protection of such persons."

This is number 6 in a series of 6 public service articles on equal housing rights and responsibilities presented by the Human Rights Commission in cooperation with your newspaper. For copies or for more information, Contact the Montana Human Rights Commission at 1-800-542-0807 or HUD at 1-800-669-9777.

Date: April 29, 1997
Re: HRC Fair Housing Enforcement Project
Subj: Audio Public Service Announcement Texts

Announcer: They won't tell you it's because you have children.
Screener: Apartment rentals, how can I help you? Oh, two little boys, uh-huh. And yourself. I see Well, you're welcome to drop by the office and fill out an application, but we really don't have any 2-bedrooms available right now.
Announcer: It's illegal to discriminate against families with children. Housing discrimination stops when people stop putting up with it. Call HUD at 1-800-669-9777.

This is Mary Chapin Carpenter. When it comes to getting housing luck shouldn't have anything to do with it. What matters is our ability to pay. Under the federal Fair Housing Act, it's illegal to consider race, color, national origin, sex, religion, family status, or disability in housing decisions. If you think you have been discriminated against, you can fight back. Call HUD at 1-800-669-9777.

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Announcer: What color is your money?
Male: You know that home I'm trying to buy? The lender turned me down.
Male: Why'd they turn you down?
Male: They said something about my debt-to-income ratio being too high. But the lender pre-qualified me for the home, my credit's good, and I've got enough money.
Male: Maybe green isn't the only color they're looking at.
Announcer: It's okay to consider color, as long as it's green. Lending discrimination is against the law. Call HUD at 1-800-669-9777.

We all know it's the sensational story that gets the front page, but this story deserves the front page. It's about housing discrimination. Hi, this is Edward Asner. Housing discrimination happens every day in neighborhoods and communities across the country. Members of minority groups, families with children, people with disabilities and others are often denied the right to fair

housing. It's unfair, it's painful and it's against the law. Don't take it, report it.
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Announcer: Your right to fair housing is the law. If you feel you have been discriminated against in your effort to rent or purchase housing, call the U.S. Department of Housing and Urban Development at 1-800-669-9777.

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Announcer: Sometimes people say they're just helping you out when they decide to violate your rights to equal housing opportunities:

Manager: Ma'am, this is the only trailer we've got, but it won't work. We've been careful to keep kids off this section of the court. You know, safety reasons, it's for their own good.

Agent: Since you called, I've been looking all over town for the right areas. I think I found the perfect spot. I've helped a lot of couples find homes there, and they all speak Spanish or at least I think they do. That should make it a lot easier for you.

Owner: Boy, I would really love to show you the apartment, but I think your wife would probably have too much trouble getting up and down the stairs what with her condition and all. I'd hate to put her in that kind of a situation.

Announcer: Nobody does you any favors denying you your fair housing rights. If someone offers you that kind of help, just say no, you can't do that. If you need more information about your rights to equal housing opportunities, call HUD at 1-800-669-9777.

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Announcer: Montana law prohibits housing discrimination based on age or marital status. That means you can not be denied housing opportunities because of how old or how young you are, or because you are single, widowed, married, or divorced. If you can meet the terms and conditions of the lease, even if you are a student or retired. If you're qualified, then your rights are protected under state fair housing laws. For more information, call the Montana Human Rights Commission at 1-800-452-0807.

Announcer: Montana and Federal law guarantee that you can not be denied housing based on race, sex, age, religion, disability, national origin, or marital or familial status. to find out more contact the U.S. Department of Housing and Urban Development at 1-800-669-9777, or the Montana Human Rights Commission at 1-800-452-0807.

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fair housing laws--housing discrimination is illegal and unfair. Don't be fooled by excuses. For more information contact HUD at 1-800-669-9777.

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HOUSING RIGHTS ARE GUARANTEED TO FAMILIES WITH CHILDREN.

The 1988 Federal Fair Housing Act and the Montana Human Rights Act prohibit housing discrimination against families with children under the age of 18.

THE LAW PROTECTS:

- * Established families with children.
- * Persons planning on having a family.
- * Pregnant women.
- * Traditional and non-traditional families, such as single parent families.
- * Persons in the process of securing legal custody of children through foster care, adoption, or divorce.
- * Unique or unexpected circumstances which may change the composition of a family, such as the death of the parents, temporary or permanent court ordered custody, or written permission from a parent or legal guardian.
- * Any other type of family composition, regardless of blood relation or affiliation that relates to cohabitation with children.

Housing discrimination is also prohibited on the basis of Race, Color, National Origin, Religion, Creed, Physical or Mental Disability, Gender (including Sexual Harassment), Marital Status and Age.

Families or persons planning to have a family have a guaranteed right to equal access to the housing of their choice. You cannot be denied housing simply because you have children. If you think someone has unlawfully discriminated against you or otherwise impeded your efforts to rent or purchase housing because you have children, please contact:

THE MONTANA HUMAN RIGHTS COMMISSION

P.O. Box 1728

HELENA, MONTANA 59624-1728

(406) 444-2884 or 1-800-542-0807

TDD: (406) 444-0532



Equal Housing Opportunity

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OR

U.S. DEPT. OF HOUSING & URBAN DEVELOP.
Denver Regional Office
First Interstate Tower North
633 17th Street
Denver, Colorado 80202-3607
1-800-669-9777
TDD: 1-800-927-9275



Equal Housing Opportunity

Supported in part by a grant from the U.S. Department of Housing and Urban Development under FHIP Education and Outreach.

The Human Rights Commission is committed to making its services available to persons with disabilities in compliance with Title II of the Americans with Disabilities Act and relevant state law. The Commission will not exclude persons with disabilities from participation at its meetings or otherwise deny them the Commission's services, programs, or activities. The Commission will also provide and accept information in alternative formats to accommodate disabilities. Persons with disabilities requiring accommodation in order to take advantage of the commission's services should contact the commission staff.

500 copies of this public document were published at an estimated cost of .40 per copy, for a total cost of \$250.00, which includes \$250.00 for printing and \$.00 for distribution.

Human Rights Commission
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Helena, MT 59624-1728
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FAX: (406) 444-2798

DENYING HOUSING TO FAMILIES WITH CHILDREN IS AGAINST THE LAW



If you have children. . . or are planning to have a family, you have a guaranteed right to EQUAL ACCESS to the housing of your choice. You cannot be denied housing simply because you have children.

Equal Housing rights are guaranteed to families with children. Discrimination against families with children is illegal in every state in the nation.

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What are the other protected classes in housing?

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Religion, Creed, Physical or Mental Disability, Gender (including Sexual Harassment), Marital Status and Age.

How to recognize housing discrimination?

Landlords, property managers, or real estate agents generally will not directly state, "we don't accept children" or "there are no kids allowed." Discrimination against families with children is subtle.

The agent may simply refuse to rent to families or tell them the housing is not available when it is. They may refuse to sell, rent or even deal with a person because they have children or they may advertise or indicate the housing is available for only certain people (adults only).

What are some frequently used policies which discriminate against families with children?

There may be attempts to discourage families by changing the terms, conditions, services and facilities. For example, different rules, charging additional fees, or applying more burdensome rental criteria, larger deposits, increased water charges, or higher rent based on the number of people or children in a family.

There may be attempts to impose occupancy standards which prevent children from residing in a development or steer families with children away from adult only areas. All of these practices are illegal. These practices promote segregation and disrupt the housing market.

YOU SHOULD SUSPECT unlawful housing discrimination, if you hear statements like:

- "The building is not safe for children."
- "We take younger children, but teenagers will disturb the other tenants."
- "Sure, we rent to families with kids, but we'll need an extra security deposit."
- "Yes, we'll allow children but we'll have to charge more rent for each kid."
- "Only 3 people are allowed in a 2 bedroom apartment."
- "Children are only allowed in the basement and first floor units."
- "My insurance company won't let me rent second and third floor units to anyone with small children, your children are just too young."
- "Our kids building [or family section] is full."
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AN ACT GENERALLY REVISING THE LAWS RELATING TO THE COMMISSION FOR HUMAN RIGHTS; PROVIDING THAT THE COMMISSION MAY NOT HIRE ITS OWN STAFF; TRANSFERRING THE STAFF OF THE COMMISSION TO THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING THAT THE STAFF OF THE COMMISSION IS NOT INDEPENDENT OF THE COMMISSIONER OF LABOR; PROVIDING THAT THE DEPARTMENT MAY NOT FILE A COMPLAINT ON BEHALF OF ANOTHER PERSON; REQUIRING THE ADOPTION OF THE MONTANA RULES OF CIVIL PROCEDURE, THE MONTANA RULES OF EVIDENCE, AND APPROPRIATE RULES OF THE MONTANA CODE OF CRIMINAL PROCEDURE AS PART OF PROCEDURAL RULES; PROVIDING THAT THE COMMISSIONER MAY APPLY TO A DISTRICT COURT FOR A PRELIMINARY INJUNCTION AGAINST A RESPONDENT; REQUIRING THE DEPARTMENT TO INFORM A POTENTIAL RESPONDENT WITHIN 10 BUSINESS DAYS AFTER RECEIPT OF A COMPLAINT; PREVENTING THE DEPARTMENT FROM REQUESTING A CHANGE OF VENUE IN A CONTESTED CASE HEARING; PROHIBITING THE DEPARTMENT FROM PETITIONING A DISTRICT COURT FOR ENFORCEMENT OF A COMMISSION ORDER; RESTRICTING THE DEPARTMENT FROM DENYING THE FILING OF A CASE IN DISTRICT COURT; ALLOWING A RESPONDENT TO REMOVE A CASE TO DISTRICT COURT; REVISING PENALTY PROVISIONS; AMENDING SECTIONS 2-15-1706, 39-1-102, 49-2-101, 49-2-203, 49-2-204, 49-2-501, 49-2-503, 49-2-504, 49-2-505, 49-2-506, 49-2-508, 49-2-509, AND 49-2-510, MCA; REPEALING SECTIONS 49-2-201, 49-2-502, 49-3-304, 49-3-305, 49-3-306, 49-3-307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, AND 49-3-312, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. It is the intent of the legislature that the commission sit in independent judgment of complaints of alleged discrimination in Montana and that the staff operate under the direction

and control of the commissioner. The staff is not independent of the commissioner. It is the intent of the legislature that the commission and the department not favor, directly or indirectly, complainants or respondents with procedural or substantive matters of discrimination in Montana. The commission and the department shall maintain the highest standards of objectivity and impartiality when judging cases asserting alleged discrimination in Montana. It is not the intent of the legislature that the department be prohibited from dismissing matters, from referring matters to other agencies following an initial inquiry and interview, or from reaching a decision in an investigation or contested case hearing.

Section 2. Section 2-15-1706, MCA, is amended to read:

"2-15-1706. Commission for human rights -- allocation -- quasi-judicial. (1) There is a commission for human rights.

(2) The commission consists of five members appointed by the governor with the consent of the senate.

(3) The commission is designated as a quasi-judicial board for the purposes of 2-15-124 and its members ~~shall~~ must be compensated and receive travel expenses as provided for in 2-15-124.

(4) The commission is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121, ~~except that the commission may hire its own personnel, may seek and receive private and federal funds in its own name, and may determine all matters of policy concerning the use of its budget. Subsection (2)(d) of 2-15-121 shall not apply for purposes of this section.~~

Section 3. Section 39-1-102, MCA, is amended to read:

"39-1-102. Duties of department. The department shall enforce all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, and all laws relating to child labor ~~which~~ that regulate the employment of children in any manner and shall administer the laws of the state relating to free employment offices and all other state labor laws. The department shall investigate and enforce the laws prohibiting discrimination contained in Title 49, chapters 2 and 3, and provide a means for conciliation between parties."

Section 4. Section 49-2-101, MCA, is amended to read:

"49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the

following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this chapter.

~~(2)~~(3) "Commission" means the commission for human rights provided for in 2-15-1706.

(4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

~~(3)~~(5) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment. It includes without limitation the right to incur and defer debt that is secured by residential real property.

~~(4)~~(6) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

~~(5)~~(7) "Creditor" means a person who, regularly or as a part of the person's business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(8) "Department" means the department of labor and industry provided for in 2-15-1701.

~~(6)~~(9) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

~~(7)~~(10) "Employee" means an individual employed by an employer.

~~(8)~~(11) "Employer" means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

~~(9)~~(12) "Employment agency" means a person undertaking to procure employees or opportunities to work.

~~(10)~~(13) "Financial institution" means a commercial bank, trust company, savings bank, finance

company, savings and loan association, credit union, investment company, or insurance company.

~~(11)~~(14) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the sleeping quarters of its occupants.

~~(12)~~(15) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

~~(13)~~(16) "National origin" means ancestry.

(17) (a) "Organization" means a corporation, association, or any other legal or commercial entity that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

(b) The term does not include a labor organization.

~~(14)~~(18) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.

~~(15)~~(19) (a) "Physical or mental disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

~~(16)~~(20) (a) "Public accommodation" means a place that caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that

proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection ~~(16)~~ (20), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

~~(17) "Staff" or "commission staff" means the staff of the commission for human rights."~~

Section 5. Section 49-2-203, MCA, is amended to read:

"49-2-203. Subpoena power. (1) The commission may subpoena witnesses, take the testimony of any person under oath, administer oaths, and, in connection therewith, require the production for examination of books, papers, or other tangible evidence relating to a matter ~~either under investigation by the commission staff or in question before the commission. The commission may delegate the foregoing powers to a person within the staff for the purpose of investigating a complaint.~~

(2) The department's staff may request that a subpoena relating to a matter under investigation be issued by the commissioner or the commissioner's authorized representative. The authorized representative may not be involved in enforcement of human rights. The commissioner may subpoena witnesses, take testimony under oath, administer oaths, and require the production, for examination, of books, papers, or other intangible evidence.

(3) A party may request subpoenas from the commissioner for the purposes provided in subsection (2).

~~(2)(4)~~ Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the Montana Administrative Procedure Act."

Section 6. Section 49-2-204, MCA, is amended to read:

"49-2-204. ~~Commission to adopt rules~~ Rules. (1) The commission shall adopt procedural and substantive rules necessary to implement the commission's responsibilities under this chapter. Rulemaking procedures ~~shall~~ must comply with the requirements of the Montana Administrative Procedure Act. At a minimum, the commission shall adopt as part of its procedural rules all applicable portions of the Montana Rules of Civil Procedure and the Montana Rules of Evidence. The commission may adopt the procedural

provisions of Title 46 as it considers appropriate.

(2) The department shall adopt procedural and substantive rules necessary to implement the department's responsibilities under this chapter. Rules adopted under this chapter must comply with the Montana Administrative Procedure Act. For contested case hearings conducted pursuant to 49-2-505, the department shall adopt all applicable portions of the Montana Rules of Civil Procedure and the Montana Rules of Evidence."

Section 7. Section 49-2-501, MCA, is amended to read:

"49-2-501. Filing complaints. (1) A complaint may be filed with the department by ~~or on behalf of any person party~~ claiming to be aggrieved by any discriminatory practice prohibited by this chapter.

(2) A complaint may be filed on behalf of a party claiming to be aggrieved by a discriminatory practice prohibited by this chapter if the person acting on behalf of the aggrieved party is the aggrieved party's guardian, attorney, or duly authorized representative or an advocacy group, labor organization, or other organization acting as an authorized representative.

(3) The complaint must be in the form of a written, verified complaint stating the name and address of the person party, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.

~~(2)(4)~~ (a) Except as provided in 49-2-510 and subsection ~~(2)(b)~~ (4)(b) of this section, a complaint under this chapter must be filed with the ~~commission~~ department within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(c) Any complaint not filed within the times set forth ~~herein~~ in this section may not be considered

by the commission or the department."

Section 8. Section 49-2-503, MCA, is amended to read:

"49-2-503. Temporary relief by court order. At any time after a complaint is filed under this chapter, a district court may, upon the application of the commissioner or the commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions."

Section 9. Section 49-2-504, MCA, is amended to read:

"49-2-504. Informal ~~settlement~~ investigation and conciliation. (1) (a) ~~The commission staff department~~ shall informally investigate the matters set out in ~~a filed~~ the complaint promptly and impartially. If the ~~staff department~~ determines that the allegations are supported by ~~substantial~~ a preponderance of the evidence, it shall ~~immediately try to~~ attempt to achieve a resolution of the complaint by conference, conciliation, and persuasion that, in addition to providing redress for the complaint, includes conditions that eliminate the discriminatory practice ~~by conference, conciliation, and persuasion, if any, identified in the investigation.~~ The department shall, within 10 business days following receipt of a filed complaint, notify a respondent that the respondent is the subject of a filed complaint. The notification must be in writing and must include a copy of the filed complaint. If requested, the department shall also provide the parties with all other information related to the complaint in the possession of the department that is not currently in the possession of the parties or a party. The department shall make known to the parties the fact that information is available upon request. The department may not investigate a complaint until it has received notice that the respondent has received the department's notification of the complaint.

(b) If a complaint is filed relative to an employment-related complaint and if the commissioner decides that the inclusion of documents or information contained in the complaint would seriously impede the rights of a person or the proper investigation of the complaint, the information may be excluded from the notification by providing a written summary of the information contained in the complaint. The written summary must include sufficient information to give maximum effect to the intent of this chapter.

(2) The respondent shall file an answer to a complaint filed with the department within 10 business days of the respondent's receipt of the complaint. An answer may be a response simply admitting or denying the allegations without further specificity or requesting additional information from the department.

SB 0350

The time for filing an answer may be extended by a showing of good cause.

(3) The department shall commence proceedings within 30 days after receipt of a complaint.

(4) The department shall make a finding regarding the merit or nonmerit of the complaint within 180 days after a complaint is filed, except that the department shall make the finding within 120 days after a complaint is filed under 49-2-305."

Section 10. Section 49-2-505, MCA, is amended to read:

"49-2-505. Contested case hearing. (1) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the ~~staff~~ department shall ~~inform the commission of the failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the person, educational institution, financial institution, or governmental entity or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission~~ hold a hearing on the complaint. The department shall serve notice of the hearing and a copy of the complaint on the parties.

(2) (a) If the parties mutually agree to permit the department to retain jurisdiction of the case under this chapter for a period of time that exceeds 12 months after the complaint was filed, then the parties shall stipulate to a schedule for proceedings to be established by the department.

(b) The department shall, not later than 395 days after the complaint was filed, set a date for an administrative hearing in the case.

(c) The case must be heard no later than 90 days after the date is set by the department. The department may, in its sole discretion, issue a continuance of the hearing date only upon a showing of good cause.

~~(2)(3)~~ (a) The hearing must be held by the ~~commission~~ department in the county where the unlawful conduct is alleged to have occurred unless the person, institution, entity, or agency a party charged in the complaint ~~or the commission~~ requests and is granted a change of venue for good cause shown. The case in support of the complaint may be presented before the ~~commission~~ department by the ~~staff~~, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the applicable portions of the Montana Administrative Procedure Act except as provided in 49-2-508 Rules of Civil Procedure as adopted by the department.

(b) Upon request of the hearings officer, the department may present evidence with regard to

activity conducted. However, except in cases brought pursuant to 42 U.S.C. 3601, et seq., the department may not represent either party in a contested case hearing.

(3) A party may appeal a decision of the hearings officer to the commission. A party shall provide notice of its appeal to the commission, the department, and all parties within 10 business days of receipt of the notice of decision of the administrative hearing. The commission shall hear all appeals within 120 days of receipt of notice of appeal. The commission shall render a decision within 90 days of hearing the appeal.

(4) All hearings conducted under this section may, upon stipulation of the parties, be heard telephonically.

~~(3)~~(5) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

~~(4)~~(6) The prevailing party in a hearing under this section may bring an action in district court for ~~attorneys'~~ attorney fees. The court in its discretion may allow the prevailing party reasonable ~~attorneys'~~ attorney fees. An action under this section must comply with the Montana Rules of Civil Procedure."

Section 11. Section 49-2-506, MCA, is amended to read:

"49-2-506. Procedure upon a finding of discrimination. (1) If the commission or the department, after a hearing, finds that a ~~person, institution, entity, or agency party~~ against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission or the department shall order ~~him the or it party~~ to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) ~~Except as provided in 49-2-510, the~~ Except as provided in 49-2-510, the order may not require the payment of ~~any~~ punitive damages.

(3) Whenever a commission or department order or conciliation agreement requires inspection by the ~~commission staff~~ department for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than ~~3 years~~ 1 year."

Section 12. Section 49-2-508, MCA, is amended to read:

"49-2-508. Enforcement of commission or department order or conciliation agreement. If the ~~commission's order issued under 49-2-506~~ is not obeyed, ~~the commission staff or the commissioner or a~~ party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's or department's order by any appropriate order. The commissioner or a party may also commence a civil action in an appropriate district court for relief for a breach of a conciliation agreement."

Section 13. Section 49-2-509, MCA, is amended to read:

"49-2-509. ~~Filing a Conclusion of complaint in -- filing in~~ district court. (1) Except as provided in subsection (2) ~~or with respect to complaints alleging a violation of 49-2-305, the commission staff department~~ shall, at the request of either party, ~~issue a letter entitling the complainant to file a discrimination action in district court~~ conclude the administrative proceedings if:

~~----- (a) the commission has not yet held a contested case hearing pursuant to 49-2-505~~

(a) the department has completed its investigation in a complaint filed pursuant to 49-2-305; or

(b) 12 months have elapsed since the complaint was filed; and

~~----- (b) 12 months have elapsed since the complaint was filed.~~

(2) The ~~commission department~~ staff may not refuse to permit removal of a case to district court ~~conclude the administrative proceedings if unless:~~

~~(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;~~

~~(b)(a)~~ the party requesting removal the conclusion of the administrative proceedings has waived the right to request removal ~~to filing in~~ the district court;

~~(c)(b)~~ more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the ~~commission department~~ fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

~~(d)(c)~~ the party requesting removal conclusion of the administrative proceedings has unsuccessfully attempted through court litigation to prevent the ~~commission staff department~~ from investigating the complaint.

(3) The ~~commission department staff may shall~~ dismiss a complaint filed under ~~49-2-504~~ this

chapter and ~~allow~~ the complainant to may file a discrimination action in district court if:

(a) the commission or the department ~~staff determines that the commission~~ lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the ~~staff's~~ investigation of the complaint or fails to keep the ~~commission~~ department advised of changes of address; ~~or~~

(c) the ~~commission~~ department ~~staff~~ determines that the allegations of the complaint are not supported by ~~substantial~~ a preponderance of the evidence; ~~or~~

(d) the department determines that the commission or the department will not or cannot hold a hearing within 12 months after the filing of the complaint.

(4) A decision of the ~~commission~~ department ~~staff~~ to dismiss a complaint brought under this chapter or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on ~~him~~ the party. The commission shall review the decision in informal proceedings under 2-4-604, ~~except that 2-4-604(5) applies only to review of a refusal to permit removal. A party may ask the district court to review a decision of the commission made under this section. The review must be de novo.~~

(5) Within 90 days after receipt of a notice ~~of dismissal~~ under subsection (1) or (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection (1), the complainant may ~~petition~~ commence a civil action in the district court in the district in which the alleged violation occurred for appropriate relief. Except as provided in 49-2-510, if the ~~claimant~~ complainant fails to ~~petition~~ commence a civil action in the district court within 90 days after receipt of the letter, notice, or order issued by the commission ~~staff~~ or the department, the claim ~~shall be~~ is barred.

(6) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of chapter 3 or this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. ~~No other~~ A claim or request for relief based upon ~~such~~ the acts may ~~not~~ be entertained by a district court other than by the procedures specified in this chapter."

Section 14. Section 49-2-510, MCA, is amended to read:

"49-2-510. Procedures and remedies for enforcement of housing discrimination laws. (1) A complaint may be filed with the ~~commission~~ department by ~~or on behalf of~~ or on behalf of a person party claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be in written form, verified by the aggrieved party, and must be filed with the ~~commission~~ department within ~~4-year~~ 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(2) ~~(a) Except as provided in subsection (2)(b), if~~ If the department, on appeal, or the commission, in a hearing under 49-2-505, finds that a ~~person, institution, entity, or agency~~ party against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the ~~department or the~~ commission may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, ~~to vindicate the public interest,~~ to vindicate the public interest, assess a civil penalty:

~~(i)(a)~~ (i)(a) in an amount not exceeding \$10,000 if the respondent has not been ~~found~~ adjudged in any prior judicial or formal administrative proceeding to have committed any prior discriminatory housing practice in violation of 49-2-305; and

~~(ii)(b)~~ (ii)(b) in an amount not exceeding \$25,000 if the respondent has been ~~found~~ adjudged in any prior judicial or formal administrative proceedings to have committed one ~~other~~ or more similar discriminatory housing ~~practice~~ practices in repeated violation of a subsection of 49-2-305 during the 5-year period ending on the date of the filing of the written complaint; ~~and~~.

~~(iii)~~ in an amount not exceeding \$50,000 if the respondent has been found to have committed two or more discriminatory housing practices in violation of 49-2-305 during the 7-year period ending on the date of the filing of the complaint.

~~(b) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously found to have committed acts constituting a discriminatory housing practice, the civil penalties provided in subsections (2)(a)(iii) and (2)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory housing practice occurred.~~

(3) In the case of an order with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the

order is judicially reviewed, no later than 30 days after the order is ~~in substance~~ affirmed:

~~(a) send copies of the findings of fact, the conclusions of law, and the order to the licensing or regulatory agency; and~~

~~(b) recommend to the licensing or regulatory agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent.~~

(4) (a) When a complaint is filed under 49-2-305, a complainant; or a respondent; or aggrieved person on whose behalf the complaint was filed may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made no later than 20 days after receipt by the electing person of service of notice of certification for hearing under 49-2-505. The person making the election shall give notice to the commission department and to all ~~other~~ complainants and other respondents to whom the complaint relates named in the complaint. Within 30 days after the election is made, the commission complainant, the commissioner, or the aggrieved party ~~shall~~ may commence a civil action in an appropriate district court ~~on behalf of the aggrieved person if the commission staff has made a finding that the allegations of the complaint are supported by substantial evidence. If the commission staff has made a finding that the allegations of the complaint are not supported by substantial evidence, the complainant may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved person with respect to the issues to be determined in a civil action brought by the commission staff may intervene in the action~~ on behalf of the aggrieved party if the department has made a finding that the allegations of the complaint are supported by a preponderance of the evidence. If the department has made a finding that the allegations of the complaint are not supported by a preponderance of the evidence, the complainant may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved party with respect to the issues to be determined in a civil action brought by the department may intervene in the action.

(b) The commission department may not continue administrative proceedings on a complaint after an election is made in accordance with subsection (4)(a).

(5) (a) An aggrieved person party may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time during which an administrative proceeding under this title was pending with respect to a complaint alleging a violation of

49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(b) An aggrieved ~~person~~ party may commence a civil action under this subsection for a violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status of a complaint filed with the ~~commission~~ department except as provided in subsection (5)(d). If the ~~commission~~ department has obtained a conciliation agreement with the consent of the aggrieved ~~person~~ party, an action may not be filed under this subsection by the aggrieved ~~person~~ party regarding the alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) The ~~commission~~ or the department may not continue administrative proceedings on a complaint after the ~~beginning of a trial~~ filing of a civil action commenced by the aggrieved party under this subsection (5) seeking relief with respect to the same alleged violation of 49-2-305.

(d) An aggrieved ~~person~~ party may not commence a civil action under this subsection (5) with respect to an alleged violation of 49-2-305 if the ~~commission~~ or the department has commenced a hearing on the record under 49-2-505 regarding the same complaint.

(e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this subsection (5) or by a person against whom the violation is alleged, the court may:

(i) appoint an attorney for the applicant and the respondent; or

(ii) authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the ~~applicant~~ party is financially unable to bear the costs of the civil action. As in all actions brought in forma pauperis, the burden of showing lack of financial ability rests with the party claiming financial hardship.

~~(f) Upon timely application, the commission may intervene in a civil action brought under this subsection (5) if the commission certifies that the case is of general public importance. Upon intervention, the commission may obtain the same relief that would be available to the commission under subsection (7).~~

(6) If the court finds that a ~~person, institution, entity, or agency~~ party against whom a complaint was filed under this section has been adjudicated in a civil or formal administrative proceeding to have engaged in a similar discriminatory practice in violation of a subsection of 49-2-305, the court may, in ~~addition to the other remedies and injunctive and other equitable relief provided under 49-2-506~~ consistent

with the provisions of subsection (2), award ~~punitive~~ punitive damages. The court may also award attorney fees to the substantively prevailing party.

~~(7) (a) Whenever the commission has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been discriminated against in violation of 49-2-305 and the denial raises an issue of general public importance, the commission may commence a civil action in an appropriate district court. The commission may also commence a civil action in any appropriate district court for relief regarding breach of a conciliation agreement in a case regarding an alleged violation of 49-2-305 if the commission is a party to the agreement.~~

~~———— (b) The commission may file a civil action under this subsection (7) within 18 months after the alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.~~

~~———— (c) In a civil action under this subsection (7), the court may, in addition to the remedies provided under 49-2-506, assess a civil penalty against the respondent:~~

~~———— (i) in an amount not exceeding \$50,000 for a first violation; and~~

~~———— (ii) in an amount not exceeding \$100,000 for any subsequent violation.~~

~~———— (d) Upon timely application, a person may intervene in a civil action under this subsection (7) that involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person:~~

~~{8}(7) (a) Civil Except as provided in subsection (7)(b), all civil and administrative penalties and other revenue generated under this section must be paid to the state treasurer to be deposited in an account in the state special revenue fund to be used by the commission for housing discrimination enforcement part must be deposited into the state's general fund.~~

~~(b) Damages or penalties, whether monetary or otherwise, may not inure to an organization unless the organization is an aggrieved party. This section does not affect any amount owed to an aggrieved party."~~

Section 15. Enforcement. (1) When a possible violation of this chapter comes to the attention of the department, the commissioner may initiate a complaint on behalf of the department. The complaint must be signed by the commissioner.

(2) A person is not subject to penalties under this chapter if compliance with the provisions of this

chapter would cause the person to violate the provisions of another state law.

Section 16. Enforcement and remedies. The procedures set forth in chapter 2, part 5, apply to complaints alleging a violation of this chapter.

Section 17. Staff transfer. The staff of the commission is transferred to the department. The staff is under the direction and control of the commissioner of labor and industry. The staff shall perform functions as directed and in accordance with the express and implied purposes of [this act]. The transfer of staff is subject to 2-15-131 through 2-15-137.

Section 18. Repealer. Sections 49-2-201, 49-2-502, 49-3-304, 49-3-305, 49-3-306, 49-3-307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, and 49-3-312, MCA, are repealed.

Section 19. Codification instructions. (1) [Sections 1 and 15] are intended to be codified as an integral part of Title 49, chapter 2, part 2, and the provisions of Title 49, chapter 2, part 2, apply to [sections 1 and 15].

(2) [Section 16] is intended to be codified as an integral part of Title 49, chapter 3, part 3, and the provisions of Title 49, chapter 3, part 3, apply to [section 16].

Section 20. Applicability -- saving clause. [This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act].

Section 21. Effective date. [This act] is effective July 1, 1997.

-END-

SENATE BILL NO. 350

INTRODUCED BY MCNUTT, SLITER, HIBBARD, KRENZLER, WELLS, MCGEE, JORE, MOOD, KEENAN,
OHS, DEVLIN, BEAUDRY, MESAROS, WAGNER, BECK, MCCARTHY, GRADY, SWYSGOOD, HARP,
STANG, SHEA, FOSTER, BISHOP, DENNY, THOMAS, CLARK, GRINDE, ANDERSON, M. TAYLOR,
REHBEIN, MAHLUM, KASTEN, MILLER

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE COMMISSION FOR HUMAN RIGHTS;
PROVIDING THAT THE COMMISSION MAY NOT HIRE ITS OWN STAFF; TRANSFERRING THE STAFF OF
THE COMMISSION TO THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING THAT THE STAFF OF
THE COMMISSION IS NOT INDEPENDENT OF THE COMMISSIONER OF LABOR; PROVIDING THAT THE
DEPARTMENT MAY NOT FILE A COMPLAINT ON BEHALF OF ANOTHER PERSON; REQUIRING THE
ADOPTION OF THE MONTANA RULES OF CIVIL PROCEDURE, THE MONTANA RULES OF EVIDENCE, AND
APPROPRIATE RULES OF THE MONTANA CODE OF CRIMINAL PROCEDURE AS PART OF PROCEDURAL
RULES; PROVIDING THAT THE COMMISSIONER MAY APPLY TO A DISTRICT COURT FOR A PRELIMINARY
INJUNCTION AGAINST A RESPONDENT; REQUIRING THE DEPARTMENT TO INFORM A POTENTIAL
RESPONDENT WITHIN 10 BUSINESS DAYS AFTER RECEIPT OF A COMPLAINT; PREVENTING THE
DEPARTMENT FROM REQUESTING A CHANGE OF VENUE IN A CONTESTED CASE HEARING;
PROHIBITING THE DEPARTMENT FROM PETITIONING A DISTRICT COURT FOR ENFORCEMENT OF A
COMMISSION ORDER; RESTRICTING THE DEPARTMENT FROM DENYING THE FILING OF A CASE IN
DISTRICT COURT; ALLOWING A RESPONDENT TO REMOVE A CASE TO DISTRICT COURT; REVISING
PENALTY PROVISIONS; AMENDING SECTIONS 2-15-1706, 39-1-102, 49-2-101, 49-2-203, 49-2-204,
49-2-501, 49-2-503, 49-2-504, 49-2-505, 49-2-506, 49-2-508, 49-2-509, AND 49-2-510, MCA;
REPEALING SECTIONS 49-2-201, 49-2-502, 49-3-304, 49-3-305, 49-3-306, 49-3-307, 49-3-308,
49-3-309, 49-3-310, 49-3-311, AND 49-3-312, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN
APPLICABILITY DATE.



JUN -3 1997

OFFICE OF GENERAL COUNSEL

MEMORANDUM FOR: Laurette A. Dixon, Acting Director, Fair Housing
Assistance Program, EEIA

FROM: Harry L. Carey, Assistant General Counsel for Fair
Housing, CRE

SUBJECT: Request for Legal Analysis of Montana SB 350

Pursuant to your request of May 8, 1997, this office has prepared the following analysis of Montana SB 350 (copy attached) which amended both substantive and procedural aspects of Montana's fair housing law as codified in the Montana Code Annotated (MCA). The provisions of SB 350 will become effective on July 1, 1997.

I. The following substantive changes may impact upon your office's determination of whether Montana's fair housing law is substantially equivalent to the Act.

A. Section 4 Definitions [amends MCA 49-2-101]

Subsection 2(a) defines "aggrieved party" as a "person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this chapter." (Emphasis added.) This definition raises numerous questions concerning both its interpretation as well as the procedural aspects of how and when a person is to demonstrate that they are an "aggrieved party."

On its face, the definition will restrict the number of "persons" who are harmed by violations of Montana's fair housing law. These restrictions do not appear in the Act's comparable definition of "aggrieved person," and could be interpreted more restrictively than federal court decisions interpreting standing requirements under the Act and Article III of the Constitution. This definition could be interpreted as precluding the Department of Labor and Industry (DLI) from accepting complaints either based on tester evidence or filed by complainants who are testers or organizations whose tests have found evidence of discriminatory housing practices. As such, the definition of "aggrieved party" appears that it will not extend protections from discriminatory housing practices to all persons who the Act covers.

Even if the concepts of "interest" and injury set forth in the MCA definition of "aggrieved party" were interpreted to be consonant with the Act's standing requirements, the definition

will require a person to demonstrate that they are an "aggrieved party." While there is no explanation of how or when a person will make this showing, it is possible that DLI could not take any action with respect to processing a complaint until the person established that they met the injury and interest requirements. This demonstration could constitute a burden on the complainant that may discourage the filing of complaints. 24 C.F.R. § 115.202(a)(3).

B. Section 5 Subpoena power [amends MCA 49-2-203]

In subsection (1), as amended, it appears that the Commission on Human Rights (CHR) will retain its subpoena power, but lose its ability to delegate this power to its staff for the purpose of investigating a complaint. On its face, this provision is consonant with 24 C.F.R. § 115.202(b)(1)(ii) which requires the agency to have authority to issue subpoenas. However, other SB 350 amendments will transfer CHR's power to hold hearings to the DLI. Thus, CHR's subpoena authority will extend only to appellate proceedings.

Subsection (2), as amended, will give the DLI commissioner or his/her representative, full authority to issue investigative subpoenas. However, subsection (3) will allow any party to request the issuance of investigative subpoenas. This will conflict with HUD's amended complaint processing procedures which deletes the requirement that HUD issue a subpoena at the request of a respondent. 62 Fed. Reg. 15794 (Apr. 2, 1997) (final rule); 61 Fed. Reg. 41480 (Aug. 8, 1996) (interim rule). In amending its regulation, HUD recognized that the Act does not require complainants or respondents to be able to request subpoenas or conduct discovery during investigations.

C. Section 7 Filing complaints [amends MCA 49-2-501]

The amendments to subsections MCA 49-2-501(1), (2), and (3) use the term "party" to describe who can file a complaint and who can be the subject of a complaint. However, SB 350 does not define the term "party" except in the context of "aggrieved party." Unless "party" is defined to be coextensive with Montana's and the Act's definition of "person" then the coverage of the Montana fair housing law will not be coextensive with the Act's.

Additionally, a narrow reading of the definition of "aggrieved party," read in conjunction with subsection (2), which specifies who can file a complaint on behalf of a party claiming to be aggrieved, could limit fair housing organizations to only representing aggrieved persons in enforcement actions. Such an interpretation would be contrary to the Act and Supreme Court precedent. Federal courts have long recognized that testers and

Even if this provision of subsection (1)(A) were read narrowly to encompass only information existing at the time of complaint filing, the possible release of private, confidential information concerning the complainant could constitute a burden on the complainant that may discourage the filing of complaints. 24 C.F.R. § 115.202(a)(3)(i). Furthermore, there are no safeguards for protecting the privacy interests of third parties who may provide information and documents relevant to the complaint investigation. (The employment-related exception contained in subsection (1)(B) does not appear to apply to fair housing cases.) Failure to protect private, confidential information from public dissemination may impair DLI's ability to investigate complaints fully.

3. Subsection (1)(A), as amended, will preclude DLI from commencing an investigation until it has received notification that the respondent has received DLI notification of the complaint filing. The Act has no comparable waiting period for commencement of the investigation. The new waiting period raises a number of practical problems which may operate to undermine the effectiveness of DLI's enforcement efforts. First, this provision essentially will require DLI to personally serve Respondents, given the ease with which Respondents can thwart investigations by not accepting certified mail from DLI. Second, complaints frequently name more than one respondent; thus, the investigation will not commence until notification of service on each respondent is received. Third, respondents will never be added to complaints, because to do so would mean that the investigation had commenced before the requisite notifications. These obstacles will be especially significant given the rigid 120-day time limit for DLI to make its findings. That time period runs from the date of complaint filing, not the date that the investigation can commence.

4. MCA 49-2-504, as amended, adds subsection (3) which will require: "the Department shall commence proceedings within 30 days after receipt of a complaint." (Emphasis added.) It is unclear what action(s) or activities constitute "proceedings." Since the next new subsection contains a 120-day time requirement for making a finding, the proceedings presumably will involve something that is preliminary to making a finding. The Act has no comparable 30-day time requirement. This 30-day time limit also will be problematic since: (1) there will be no exceptions based on impracticability given circumstances beyond the DLI's control; and, (2) to the extent that the "proceedings" will require the investigation to have commenced, it is possible the notification required before commencement of the investigation will not have been received within 30 days [see p. 12, lines 9-11].

5. MCA 49-2-504, as amended, adds subsection (3) which will require DLI to make a finding regarding the "merit or nonmerit"

of the complaint within 120 days after a complaint of housing discrimination is filed under MCA 49-2-305. It appears that DLI will use a "preponderance of the evidence" standard to make its finding. See MCA 49-2-505(3)(c) (requiring DLI to dismiss the complaint if it determines that the allegations are not supported by a preponderance of the evidence); MCA 49-2-510(4)(a) (providing election process if the department has made a finding that the allegations are supported by a preponderance of the evidence). Such a standard will require a determination that, based on law and available evidence, complainant would prevail in a district court trial. The Act uses a different standard which provides for a determination "based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur." 42 U.S.C. § 3610(g)(1).

6. MCA 49-2-504, as amended, also will require DLI to make its merit/nonmerit finding 120 days after the filing of the complaint. The Act's comparable provision establishes a 100-day timeframe for HUD to conclude its investigation and make a determination; however, an exception exists when it is "impracticable" to meet the 100-day deadline. 42 U.S.C. § 3610(a)(1)(C) & (g). SB 350's new 120 day deadline is the last prong of the very rigid timeframe that MCA 49-2-504, as amended, creates. Unlike the Act, there will be no exception that will allow DLI to retain jurisdiction if it is unable to meet these tight deadlines due to circumstances beyond the department's control. These tight deadlines with no opportunity for extension to avoid a loss of DLI jurisdiction will encourage respondents to delay the enforcement process at every stage, thus potentially making the DLI enforcement process less effective.

E. Section 10 Contested case hearing [amends MCA 49-2-505]

1. Subsection (a) will require a hearing to be held if the conciliation efforts are unsuccessful. As stated supra, DLI will not be able to commence conciliation efforts until it determines that a preponderance of the evidence supports the complaint. We infer that this preponderance of the evidence determination is the same as the merit/nonmerit finding required in MCA 49-2-504(4).

2. The amendment will require DLI to hold the contested case hearing. Currently, CHR holds such hearings. This amendment appears to relegate CHR to handle only appeals and seek enforcement of its orders. See MCA 49-2-505 & 49-2-506.

3. The new timeframes set forth in MCA 49-2-505(2) are not clear, but apparently will allow DLI to have jurisdiction over a complaint for one year from the date of the complaint filing, unless the parties agree to an extension. MCA 49-2-505(2)(A); see also MCA 49-2-509(1)(B); but cf. MCA 49-2-509(1)(A) (allowing

a party to request conclusion of the administrative proceedings if DLI has completed its investigation of a complaint alleging a discriminatory housing practice). However, subsection (2)(B) will require DLI to set a date for an administrative hearing not later than 395 days after the complaint was filed. Cases must be heard no later than 90 days after the date set by DLI. MCA 49-2-505(2)(C). The Act and HUD's implementing regulations have timeframes for determinations or reasonable cause and administrative hearings, however there are no absolute deadlines which failure to meet results in a loss of the administrative tribunal's jurisdiction.

4. SB 350 adds subsection (3)(B): "Upon request of the hearing officer, the Department may present evidence with regard to activity conducted, however, except in cases brought pursuant to 42 U.S.C. 3601, et seq [the Act], the Department may not represent either party in a contested case hearing." This reference to the Act is confusing since it appears to distinguish federal fair housing claims from state ones, and allow DLI representation of aggrieved parties in the former not the latter. Nonetheless, this provision diverges from the Act's principle that the enforcement body's role is to vindicate the public interest. Pursuant to the Act, after a determination of reasonable cause is made and when administrative hearings are pending, the enforcement body assumes the role of litigating the case on behalf of the aggrieved person in order to also represent the public interest in eliminating discriminatory housing practices. The amendments to the Montana fair housing law, and this subsection in particular, appear to remove from CHR, and its successor, DLI, its role of representing the public interest.

5. New subsection (4) will allow parties to stipulate that a hearing be held telephonically. The Act does not have a comparable provision. HUD's hearing rule provides for oral hearings conducted at a place in the vicinity of the alleged discriminatory housing practice. 24 C.F.R. § 180.600(a)(2). The parties may waive the right to appear at a hearing, but in such cases no hearing is held. 24 C.F.R. § 180.610.

F. Section 11 Procedure upon a finding of discrimination
[amends MCA 49-2-506]

If the Commission or DLI finds that a respondent has engaged in a discriminatory practice, MCA 49-2-506(2), as amended, will prohibit the Commission or DLI from awarding punitive damages. However, the Commission will retain the power to impose a civil penalty.

24 C.F.R. § 115.202(g)(1) requires a state law to provide for enforcement of the law by an aggrieved person in a court which is empowered to award actual and punitive damages. Punitive damages are currently available in district court

actions pursuant to MCA 49-2-510(6), and the election mechanism (MCA 49-2-510(4)(a)) enables parties to opt to proceed in district court if they would like to seek punitive damages not available in the administrative forum. However, the amendment to MCA 49-2-510(6) [Section 13] will eliminate the availability of such punitive damages in district court. Therefore, under the new law, complainants will not be able to receive punitive damages in either the administrative or court forum.

Additionally, the amendment to subsection (3) will reduce the length of time that the Commission staff may monitor compliance with a Commission order or conciliation agreement 3 years to 1 year. The Act contains no limitations on the length of time required to monitor compliance with an order or conciliation agreement.

G. Section 12 Conclusion of complaint--Filing in district court [amends MCA 49-2-509]

Subsections (1) & (2), as amended, are similar in some respects to the Act's "election" process. However, some ambiguity exists because in the caption and subsections (1) and (2), as amended, the term "removal to district court" is replaced with "conclude the administrative proceedings." However, subsection (4) still includes a reference to a "removal to district court." After the conclusion of the administrative proceedings, the complainant (presumably an "aggrieved party") may commence a civil action in district court. There is no provision for DLI to assist the complainant in this filing, as would occur in the Act's election process.

Subsection (3) will require DLI to dismiss a complaint if "the department determines that the Commission or the Department will not or cannot hold a hearing within 12 months after the filing of the complaint." (This is odd since the amendment to MCA 49-2-505 will allow only the Department to hold hearings.) Once the complaint is dismissed, the complainant may file in district court, but unlike the Act, the complainant will receive no assistance from DLI or the Commission in pursuing the case. Even though MCA 49-2-505(2)(a), as amended, will allow the 12-month time limit to be extended with the mutual agreement of the parties, the dismissal appears automatic unless DLI is made aware of such an agreement. This appears to be yet another adverse consequence of the strict deadlines that will be imposed on DLI's investigative and enforcement process.

H. Section 13 Procedures and remedies for enforcement of housing discrimination laws [amends MCA 49-2-510]

1. The filing provisions in subsection (1) appear that they will overlap with those set forth in MCA 49-2-501. To the extent

that the provisions diverge, it is unclear which will apply to complaints alleging discriminatory housing practices.

2. Subsection (2), as amended, will reduce the maximum civil penalty that the Commission could award from \$50,000 to \$25,000. This amount will be lower than that which can be awarded under the Act. 42 U.S.C. § 3612(g)(3). See also 61 Fed. Reg. 52227 (Oct. 4, 1996).

3. Pursuant to the amendment to subsection (3), the Commission will not make a recommendation to a licensing or regulatory agency about appropriate disciplinary action to be taken against a respondent who DLI (or the Commission or court upon review) has found to have committed a discriminatory housing practice. This provision differs from the Act in two respects. First, 42 U.S.C. § 3610(e)(2) does not require an administrative finding of discrimination before notification of a relevant licensing or regulatory agency. Also, 42 U.S.C. § 3612(g)(5) requires the Secretary make a recommendation to the relevant licensing or regulatory agency after an administrative law judge has ruled that a discriminatory housing practice occurred.

4. Subsection (5)(c), as amended, provides that neither CHR nor DLI may continue administrative proceedings on a complaint after the aggrieved person files a civil action in district court. This differs from the Act which provides that the administrative process shall cease after the commencement of the trial of a private civil action. 42 U.S.C. § 3610(g)(4) & 3612(f).

5. SB 350 will delete subsection(5)(f) which allowed the Commission to intervene in cases of general public importance, and seek civil penalties. Pursuant to the Act, the Attorney General has the authority to intervene in private civil actions involving issues of general public importance. 42 U.S.C. § 3613(e).

6. As amended, subsection (6) will allow the district court to award a civil penalty if it finds a defendant liable for housing discrimination and the defendant previously had committed a similar discriminatory housing practice. This civil penalty provision will replace unlimited "punitive damages" that the court can currently award. The Act allows federal district courts to award private plaintiffs both actual and punitive damages. 42 U.S.C. § 3613(c).

7. As amended, subsection (6) will change the standard for the award of attorney fees. Currently, the district court may award attorney fees to the "prevailing party." As amended, such fees will be awarded to the "substantively prevailing party." We do not know when a party will be determined to be "substantively prevailing" nor how this standard differs from the current one.

The Act provides for awards of attorney's fees to the "prevailing party" in both administrative and district court proceedings. 42 U.S.C. §§ 3612(p), 3613(c)(2) & 3614(d)(2).

8. SB 350 eliminates existing subsection (7) which enables the Commission to: (a) commence pattern and practice litigation in district court; and (b) seek relief in district court for breach of conciliation agreement to which the Commission is a party. Cf. 42 U.S.C. § 3614(a) (allowing Attorney General to file pattern & practice actions); 42 U.S.C. § 3614(b)(2) (authorizing suits to obtain relief from breach of conciliation agreements).

9. MCA 49-2-510(7)(B), as amended, will provide: "Damages or penalties, whether monetary or otherwise, may not inure to an organization unless the organization is an aggrieved party. This section does not affect any amount owed to an aggrieved party." Not only does the Act contain no similar limitation on the award of damages or penalties, case law supports the grant of wide-ranging relief to remedy discriminatory housing practices. For example, a federal or administrative law judge may order a respondent to pay a non-party organization to provide fair housing training for respondent's employees.

II. Changes which may impact on the administration and enforcement of the Montana fair housing law.

A. Section 1 Purpose [new section]

Pursuant to this section, the Commission for Human Rights (CHR) will operate under the direction and control of the Commissioner of Labor and Industry. Additionally, the section will require the Commission's staff to be independent and objective, and favor neither complainants nor respondents.

B. Section 2 Commission for human rights-allocation-quasi judicial [amends MCA 2-15-1706]

This section creates the five-member Commission for Human Rights. The subsection (4), as amended, will rescind the Commission's ability to (a) hire its own personnel; (b) solicit and obtain private and federal funds in its own name; and (c) determine policy matters concerning the use of its budget. Since the Commission is under the Department of Labor and Industry, we infer that the amendment will transfer these powers to the Commissioner of Labor and Industry.



U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
ROCKY MOUNTAIN, DENVER
633 17TH ST.
DENVER, COLORADO 80202-3607

May 27, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Marc Racicot
Governor of Montana
Helena, Montana 59620-0801

Dear Governor Racicot:

Subject: Analysis of Impediments to Fair Housing Choice
and Affirmatively Furthering Fair Housing
Desk-Audit and Technical Assistance Review
Date: May 27, 1997
Location: State of Montana

Thank you for providing this office with a copy of your Analysis of Impediments to Fair Housing Choice (AI). At this time, in lieu of an on-site visit, we have conducted a desk audit of your AI submittal. The areas covered during the review include the following: (1) Implementation of the Analysis of Impediments to Fair Housing Choice (AI), including identification of impediments, actions taken to overcome the effects of these impediments, and records supporting the analysis and actions; and (2) other actions taken under the State of Montana's Affirmatively Furthering Fair Housing (AFFH) certification.

The Desk-Audit utilizes the criteria of 24 C.F.R. 570.904 (c) and the Fair Housing Planning Guide. According to this guidance, the AI is to be a comprehensive review of a jurisdiction's laws, regulations, administrative policies, procedures and practices. It requires an assessment of how these laws, etc., affect the location, availability and accessibility of housing; and an assessment of conditions, both public and private, affecting fair housing choice.

Based on the Department's review of your AI, and information reported in your Annual Action Plan, and the Consolidated Annual Performance Report (CAPER) the Department offers the following comments. The Department advises that while there are a few concerns with the AI, the State is implementing housing and community development programs in a manner which affirmatively further fair housing in the private and public sectors.

The State acknowledges that Impediments to fair housing exist in Montana, and are faced by all protected classes, with varying degrees of frequency and severity. The State identified five (5) Impediments to fair housing. The Impediments are:

- (1) Different terms and conditions for rental.
- (2) Disparate treatment in rental property.
- (3) Discriminatory advertising in sale or rental property.
- (4) Restrictive covenants in sale of property.
- (5) Institutional obstacles in lending.

The State proposes to carry out the following actions to address the identified impediments.

- Provide referral to the Human Rights Commission and, hereby, endorses the Commission's complaint-based system;
- Endorse a statewide dialogue between key parties in the fair housing arena, such as real estate groups, landlord and property management associations, fair housing advocates, and interested citizens;
- Provide information to organizations in Montana, such as realty groups landlord associations, and the Montana Newspaper Publishers Association, about liabilities associated with discriminatory advertising practices in housing;
- Continue to provide fair housing education in Montana Department of Commerce (MDOC) programs, and inform individuals and relevant groups of fair housing education opportunities;
- Continue to consider the results or implications of data and various studies, such as the Home Mortgage Disclosure Act information, the Human Rights Commission complaint data base, and fair housing organizations' Fair Housing Initiative Program reports;
- Continue to monitor fair housing compliance in the grantee projects; and
- Continue to authorize grantee administrative funds for HOME and CDBG grantees to conduct activities that affirmatively further fair housing.

The Department agrees with the proposed actions to address the identified impediments, and recommends that the State consider the following additional actions.

(1) The State relies heavily on the Montana Human Rights Commission with respect to its efforts to meet its AFFH certification in the CDBG and HOME programs. With the passage of SB350, we expect that some of these efforts will be diminished. As you know, fair housing activities are eligible activities under planning and program administration, as well as public services. The State should consider allocating resources directly to assist in additional fair housing activities in the State. The resources should be targeted to areas within the State where there is a large Native American population.

(2) The State should encourage lending institutions in the State to sign the "Fair Lending Best Practices Agreement". Enclosed is a packet of information that pertains to this Agreement. The State Coordinator for Montana Mr. Richard Brink, will contact staff at the MDOC to discuss this Agreement in the next few weeks.

(3) The State should consider conducting an education campaign which specifically targets Native Americans, in an effort to dispel some of the cultural barriers that may account for the lack of complaints filed by Native Americans.

The citizens comments reflected in the 1997 Annual Action Plan suggest that there is a need for a fair housing information clearing house. The comments also suggest that fair housing is an area of much concern in the State. The State MDOC can fund, and is strongly encouraged to allocate funds for fair housing activities. This funding is not limited to the subrecipients.

The State did not provide in its Analysis of Impediments, proposed time tables or establish milestones for eliminating any of the identified impediments or other corrective actions. We are requesting that the AI be amended to include milestones and a proposed time table.

The Department desires to work with the MDOC in its efforts to develop programs that affirmatively further fair housing and proactively address impediment to fair housing choice. Because of the potential impact of the passage of SB350, we strongly encourage MDOC to look at independent efforts to affirmatively further fair housing.

If you have any questions or comments, please contact
Ms. Sheila H. Maddox, Director, Operations Division, at
(303) 672-5430 extension 1367 (Voice) or (303) 672-5248 (TDD) or
(303) 672-5026 (FAX).

Sincerely,



John Eubanks
Director
Program Operations and
Compliance Center

cc:
Connie Onstad
Consolidated Plan Coordinator
Department of Commerce
1424 9th Avenue
Helena, MT 59620

Gus Byrom
CDBG Program Manager
Department of Commerce
1424 9th Avenue
Helena, MT 59620



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-2000

June 27, 1997

OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

COPY

Ms. Pat Haffey
Director
Montana Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

Dear Ms. Haffey:

This letter is in further reference to the State of Montana, Montana Human Rights Commission (MHRC), substantial equivalency certification under the Fair Housing Act (the Act). It also provides you with data supporting my determination that the Montana Fair Housing Law (MFHL) does not, on its face, provide rights and remedies that are substantially equivalent to those provided in the Act.

The requirements for certification of an agency as substantially equivalent are set out in 24 CFR Part 115. Certification is a two-step procedure, an examination and affirmative conclusion on two separate inquiries:

- (a) Whether the law, administered by the agency, on its face, provides rights, procedures, remedies and the availability of judicial review which are substantially equivalent to those provided under the Act; and
- (b) Whether the performance of the agency demonstrates that, in operation, the law in fact provides rights, procedures, remedies and the availability of judicial review which are substantially equivalent under the Act.

The Department of Housing and Urban Development has previously determined that, on its face, the MFHL provided rights, procedures, remedies and the availability of judicial review which are substantially equivalent to those provided under the Act. On September 24, 1992, the MHRC received interim certification. The Denver Fair Housing Enforcement Center then conducted an on-site performance assessment of the MHRC's ability to carry out the provisions of the MFHL. After determining that MFHL and MHRC did provide rights and remedies that were substantially equivalent to those found in the Act and HUD's implementing regulations, the agency received certification. HUD executed a Memorandum of Understanding with MHRC on December 8, 1995.

In 1997, the Montana legislature enacted Senate Bill 350 which amended MFHL. Those amendments will become effective July 1, 1997 and apply to all complaints filed after that date. The Department has reviewed Senate Bill 350 and provided a legal analysis to MHRC. My staff also met with you on June 6, 1997, to discuss that analysis. In response to Senate Bill 350, the Department of Labor and Industry (DOLI) has commenced preparing rules to implement Senate Bill 350's amendments to MFHL. My staff and staff from the Office of General Counsel have reviewed your submission of the draft regulations.

Upon review of MFHL, as amended, and the draft regulations, I have concluded that significant differences exist in the coverage and protections that the Act and MFHL, as amended, provide. On its face, MFHL, as amended, does not offer fair housing rights and enforcement procedures that are substantially equivalent to those available under the Act. We question whether substantial equivalency in this regard is possible without legislative amendments to MFHL. Our specific concerns are explained briefly below:

1. It appears that MFHL's coverage will be more limited than the Act's by virtue of both (a) the definition of "aggrieved party" and the (b) replacement of the term "person" with "party," especially when referring to persons who are "respondents" under the Act.
2. MFHL findings of the merit or nonmerit will be made using a "preponderance of evidence" standard whereas comparable determinations under the Act utilize a "reasonable cause to believe" standard.
3. MFHL will require disclosure of all information "related to the complaint in the possession of the department" at the time of complaint filing, whereas the Act only requires disclosure of the actual complaint at that time.
4. The Act contains a 100-day timeframe for completion of investigations and determinations of reasonable cause. The Act's deadline can be extended in cases where completion is impracticable. However, MFHL will impose a strict 120-day deadline for completion of investigations and determinations of merit or non-merit. If the deadline is not met, MFHL will lose jurisdiction over the complaint.
5. The MFHL requires that any investigation, including non-respondent investigation, be delayed until receipt of notification that Respondent has received the complaint and the agency has received notification of that receipt.

6. Enforcement efforts conducted pursuant to the Act are structured so that HUD and the Department of Justice litigate on behalf of aggrieved persons to vindicate both the rights of the aggrieved persons and the public interest in fair housing cases. On its face, MFHL, as amended, will reduce the agency's representation of both aggrieved persons and the public interest (including, but not limited to, limiting the agency's support of aggrieved persons, subjecting aggrieved parties to possible liability for attorney's fees, and eliminating the agency's ability to represent, as a matter of right, the public interest in fair housing cases).
7. The Act and MFHL have different schemes concerning the availability and amounts of punitive damages and civil penalties in enforcement actions. For example, MFHL will allow only civil penalties to be awarded in both administrative and civil action, and place a cap of \$25,000 on these civil penalties. Also, defendants in a civil action under MFHL appear to be subject to civil penalties only after they have been found liable for a similar discriminatory practice in the past.

Based on the information above, I have determined that the MFHL does not, on its face, provide rights, remedies, procedures, and the availability of judicial review that are substantially equivalent to those provided under the Act.

Realizing the value of MHRC's assistance in the investigation of housing discrimination complaints that arise in the State, HUD is reluctant to withdraw certification with respect to the MFHL. However, based on the substantial issues which remain with MFHL as amended by Senate Bill 350, I have decided to propose to withdraw the certification previously granted in accordance with 24 CFR § 115.212.

As a result of the withdrawal, the MHRC will no longer be in a dual-filing relationship with the Department. All new complaints arising in the State of Montana will be processed by the Department starting July 1, 1997, the effective date of the new law. As discussed, the Department will honor the existing Cooperative Agreement with the MHRC to the extent that it applies to cases and proceedings pending on July 1, 1997. However, the Fair Housing Assistance Program (FHAP) Cooperative Agreement will not be renewed and will not apply to any cases filed after July 1, 1997.

Pursuant to 24 CFR § 115.212, you may submit other information or documentation that demonstrates that the MFHL is, on its face, substantially equivalent. Any additional information must be submitted within thirty (30) days from the date of this letter. If the proposed withdrawal of certification is not revoked, it will become a final withdrawal of certification sixty (60) days from the date of this letter.

We appreciate your cooperation in dealing with this very difficult situation.

Sincerely,

A handwritten signature in cursive script, reading "Susan M. Forward". The signature is written in dark ink and is positioned above the printed name and title.

Susan M. Forward
Deputy Assistant Secretary
for Enforcement and Investigations

OFFICE OF THE GOVERNOR
STATE OF MONTANA



MARC RACICOT
GOVERNOR

STATE CAPITOL
HELENA, MONTANA 59620-0601

July 25, 1997

Susan M. Forward
Deputy Assistant Secretary
for Enforcement and Investigations
U.S. Department of Housing and
Urban Development
Washington D.C. 20410-2000

Re: Montana HUD Equivalency

Dear Ms. Forward:

Please consider this letter a response to your agency's determination that the Montana Fair Housing Law (MFHL) does not on its face provide rights and remedies that are substantially equivalent to those provided for under the Fair Housing Act (FHA). As per 24 CFR 115.212, we are requesting reconsideration of the withdrawal of certification of the Montana Human Rights Commission.

I will address each of the HUD concerns in the order in which they appear in the determination.

HUD Concern:

1. It appears that MFHL's coverage will be more limited than the Act's by virtue of both (a) the definition of "aggrieved party" and the (b) replacement of the term "person" with "party," especially when referring to persons who are "respondents" under the Act.

The definition of "aggrieved party" under the MFHL is consistent with the case law defining who has standing under both the MFHL and FHA. The MFHL requires a personal and legal interest by one who has been or is likely to be injured by a violation of the MFHL. Section 49-2-101(2), Montana Code Annotated (MCA) (1997). Standing, pursuant to the FHA, requires a person to have suffered an injury in fact which is concrete and particularized and actual or imminent and which is fairly traceable to the challenged act and

Susan M. Forward

Page 2

July 25, 1997

likely to be redressed by a favorable decision. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378 (1982). Further, the provisions of the MFHL clearly allow advocacy groups and other organizations to act on behalf of a party and file complaints. Section 49-2-501(2), MCA. Finally, the Montana Supreme Court refers to pertinent federal case law for guidance in interpreting statutes patterned after federal acts. *McCann v. Trustees, Dodson School District*, 249 Mont. 362, 364, 816 P.2d 435 (1991). Thus, it is likely that the *Havens* test will be adopted by our state Supreme Court since the MFHL is patterned after the FHA.

When reviewing the adequacy of the MFHL, HUD's analysis is not limited to the text of the law, "but must take into account all relevant matters of state or local law. Regulations directives, rules of procedure, judicial decisions...." 24 CFR 115.202(e). The Montana Supreme Court has yet to consider standing issues in housing cases; however at least one district court has. That decision (*MacIntyre v. Devoe*, (4th Jud. Dist. 7/9/97)) adopted the *Havens* test and there is nothing to suggest that the state would deviate from that standard.

As regards the concern over who is a respondent under the MFHL, there is no basis to conclude that the replacement of the term "person" with "party" is a substantive change. Statutes are to be construed in accordance with the plain meaning of the language used. *Lovell v. State Compensation Mutual Ins. Fund*, 260 Mont. 279, 285, 860 P.2d 95 (1993). The term "party" is defined as, "[a] person concerned or having or taking part in any affair, matter, transaction, or proceeding, considered individually. A "party" to an action is a person whose name is designated on record as a plaintiff or defendant." *Blacks Law Dictionary* 1122 (6th ed. 1990). The plain meaning of the term "party" is inclusive of the term "person" resulting in no substantive change in who can be a respondent pursuant to the MFHL.

The Montana Administrative Procedure Act defines "party" as, "a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing in this chapter may be construed to prevent an agency from admitting any person as a party for limited purposes." Section 2-4-102(7), MCA. A "person" is defined as, "an individual, partnership, corporation, association, governmental subdivision, agency or public organization of any character." Section 2-4-102(8), MCA.

HUD Concern:

2. MFHL findings of the merit or nonmerit will be made using a "preponderance of evidence" standard whereas comparable determinations under the Act utilize a "reasonable cause to believe" standard.

Susan M. Forward

Page 3

July 25, 1997

The Montana Supreme Court interprets the "reasonable cause" standard as "such grounds of belief as would warrant a cautious man in the conclusion that it is true." *Brown v. Columbia Amusement Co.*, 91 Mont. 174, 192, 6 P.2d 874 (1931). The MFHL uses a standard which is entirely appropriate in civil matters. The preponderance of the evidence standard is a determination of whether it is more probable than not that something occurred. The distinction between the two standards is not an appreciable one and certainly not one of substance in the case law as it has developed in Montana.

HUD Concern:

3. MFHL will require disclosure of all information "related to the complaint in the possession of the department" at the time of complaint filing, whereas the Act only requires disclosure of the actual complaint at that time.

Disclosure of information pursuant to a statutory mandate is not without its bounds. The Montana Constitution provides the public a right to know, tempered only by the right of privacy. That provision is as follows:

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosures.

Mont. Const. art. II, sect. 9. A governmental agency is able to assert the privacy interest of another. *Mt. Human Rights Division v. City of Billings*, 199 Mont.434, 649 P.2d 1283 (1982). The right of privacy and the ability of a governmental agency to protect that right are founded in the constitution and cannot be nullified by statute. The protections that our state Supreme Court has specified to protect the right of privacy are evidenced by the following:

We conclude that the needs and rights of the parties and the persons whose files are sought, as well as the general public, are best met by allowing broad discovery to the HRC, but restricting the release of information which suggests the identity of employees whose files may be used in investigating the alleged discriminatory practices by respondents. We therefore direct the District Court to prepare an order requiring respondents to furnish the requested information to the HRC, but providing that the HRC shall not disclose the information to

Susan M. Forward

Page 4

July 25, 1997

any individual, agency or party (other than respondents) outside of the HRC except under the following circumstances:

(1.) In the event that the HRC deems it necessary to hold a public hearing on the alleged discriminatory practice, or to disclose the information to anyone outside the HRC (other than respondents), it shall protect the privacy of any person(s) as to the elements of such information by altering the information to provide for the anonymity of the person(s) involved. This will include the elimination of name, specific ethnic designations and other classifications which reasonably might allow identification of the person(s) whose privacy right is to be protected; except that

(2.) In the event that the HRC determines that the release of information reasonably subject to a right of privacy claim is required in a way which may disclose the identity of person(s) involved; then prior to the release of that information the HRC shall obtain from the District Court a further order of authorization and protection.

Id., 199 Mont. at 449-450.

The Department is not free to disseminate confidential information without consideration of a person's reasonable expectation of privacy as protected by the Montana Constitution. If the information being sought is not confidential, there not only is no harm, there is a legitimate public purpose to be served in the dissemination of the information, and regardless of whether it is at the federal or state level, that information is discoverable and available for public inspection. HUD's concerns over the dissemination of confidential information are obviated by virtue of the strong privacy right contained in the Montana Constitution.

HUD Concern:

4. The Act contains a 100-day time frame for completion of the investigations and determinations of reasonable cause. The Act's deadline can be extended in cases where completion is impracticable. However, MFHL will impose a strict 120-day deadline for completion of investigations and determinations of merit or non-merit. If the deadline is not met, MFHL will lose jurisdiction over the complaint.

Susan M. Forward
Page 5
July 25, 1997

The MFLH provision is in keeping with the intent of the FHA. The House Report concerning the FHA 100-day limit to complete an investigation stated:

The Secretary will investigate the complaint following its filing and will complete the investigation within a 100 day period, unless it is impracticable to do so. The Committee intends that in these exceptional cases the investigation must be completed as soon as possible thereafter. If the Secretary cannot complete the investigation within 100 days, then the Secretary is required to notify the parties and explain the reasons for the delay.

1988 *U.S. Code Cong. & Admin. News*, 2194-2195. Montana is committed to completing investigations within the first 100 days following the filing of a complaint. Further, in keeping with the intent of having an administrative process available to provide speedy, fair and inexpensive procedures for resolving housing complaints, Montana has elected to impose an absolute requirement to have every housing investigation completed by the 120th day following the filing of a complaint. Such a requirement is consistent with the intent behind the FHA.

Although we believe that we will be able to accomplish our performance goals and meet the time lines, the contract with HUD could retain a provision that allows HUD to reactivate any case the Department loses jurisdiction over due to the 120 day time line, in order to doubly protect the rights of complainants.

HUD Concern:

5. The MFHL requires that any investigation, including non-respondent investigation, be delayed until receipt of notification that Respondent has received the complaint and the agency has received notification of that receipt.

The filing of a complaint triggers certain responsibilities on the part of the respondent. Under section 49-2-504(2), MCA, the respondent is obligated to file an answer to a complaint filed with the department within 10 business days of the respondent's receipt of the complaint. In addition, there exists in Montana a statutory presumption that "[a] letter duly directed and mailed was received in the regular course of the mail." Section 26-1-602(24), MCA. A respondent's failure to respond will result in the very real possibility of having to participate in a hearing. In cases where an individual fails to respond, a determination of merit or nonmerit will be based on the information received (complaint) prior to the expiration of 120 days. Section 49-2-504(4), MCA (1997). In order to contest

Susan M. Forward

Page 6

July 25, 1997

the matter the respondent will have to request an administrative hearing or remove the matter to district court for a hearing. In no case will enforcement efforts be frustrated by a respondent avoiding service of process.

Moreover, the requirement that a respondent answer a complaint before an investigation is begun serves to eliminate surprise and more precisely define the positions of the parties and the scope of the inquiry, thereby providing enhanced due process.

HUD Concern:

6. Enforcement efforts conducted pursuant to the Act are structured so that HUD and the Department of Justice litigate on behalf of aggrieved persons to vindicate both the rights of the aggrieved persons and the public interest in fair housing cases. On its face, MFHL, as amended, will reduce the agency's representation of both aggrieved persons and the public interest (including, but not limited to, limiting the agency's support of aggrieved persons, subjecting aggrieved parties to possible liability for attorney's fees, and eliminating the agency's ability to represent, as a matter of right, the public interest in fair housing cases).

The Department retains the right to file complaints acting on its own volition to vindicate the public interest and the ability to litigate on behalf of an aggrieved party. New section 15 of the MFHL provides as follows:

Section 15. Enforcement. (1.) When a possible violation of this chapter comes to the attention of the department, the commissioner may initiate a complaint on behalf of the department. The complaint must be signed by the commissioner.

That provision clearly authorizes the Department to file complaints to enforce the provisions of the MFHL.

In addition, Section 49-2-510(4), MCA (1997), permits the Commissioner to commence a civil action in district court on behalf of an aggrieved party. The relevant part of that provision is as follows:

Susan M. Forward

Page 7

July 25, 1997

Within 30 days after the election is made, the complainant, the commissioner, or the aggrieved party may commence a civil action in an appropriate district court on behalf of the aggrieved party if the department has made a finding that the allegations of the complaint are supported by a preponderance of the evidence.

Clearly, the Department or the head of the Department (the Commissioner) can institute proceedings and litigate matters for itself or on behalf of an aggrieved party.

As regards HUD's concern over attorney fees being the responsibility of complainants, our state Supreme Court has narrowly construed the ability of respondents to recover fees from a complainant. The Montana Supreme Court adopted the standard set forth in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 98 S.Ct. 694 (1978), in construing the attorney fee provisions of the Montana Human Rights Act. That standard is, "a plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so. *McCann v. Trustees, Dodson School District*, 249 Mont. 362, 364, 816 P.2d 435 (1991). Thus, an aggrieved party will only be liable for attorney fees in frivolous cases.

HUD Concern:

7. The Act and MFHL have different schemes concerning the availability and amounts of punitive damages and civil penalties in enforcement actions. For example, MFHL will allow only civil penalties to be awarded in both administrative and civil action, and place a cap of \$25,000 on these civil penalties. Also, defendants in a civil action under MFHL appear to be subject to civil penalties only after they have been found liable for a similar discriminatory practice in the past.

At the outset, it is important to note that Montana Human Rights Commission staff indicate that there have never been any housing cases in Montana that have resulted in a punitive damage award. Further, the provisions of 24 CFR 115.202(b)(v) require the state law to provide for "an administrative proceeding in which a civil penalty may be assessed or provide an adjudication in court at agency expense, allowing the assessment of punitive damages against the respondent." (Emphasis added.) The MFHL provides for the recovery of civil penalties in an administrative proceeding. There is no specific authority pursuant to the FHA to require the assessment of civil penalties in an action filed directly with a district court.

Susan M. Forward

Page 8

July 25, 1997

HUD's regulation specifies the requirement of an administrative civil penalty or adjudication in court at agency expense allowing punitive damages. That regulation is disjunctive requiring one or the other. As such, MFHL's civil penalty provision should satisfy the requirements of that regulation. In addition, the MFHL allows the assessment of punitive damages against a party if there is a prior adjudication of a similar violation. Section 49-2-510(6), MCA. It is conceded that the Montana punitive damages provision is conditioned upon a prior adjudication of a similar discriminatory practice. If a case comes before the Department where punitive damages are an issue and there is no prior adjudication of similar discriminatory conduct, the State of Montana and HUD could agree to those cases to go directly to the HUD regional office for filing.

Although civil penalties under MFHL may potentially be lower than those under FHA, and punitive damages are contingent upon a prior adjudication of a violation of the MFHL, those items alone should not prove fatal to the MFHL being substantially equivalent to the FHA. As stated by the U.S. District Court, E.D. Wisconsin:

The fair housing act of 1968, 42 U.S.C. § 3610(d), provides that:

"* * * no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter."

I believe that § 101.60 Wis. Stats. does provide substantially equivalent rights and remedies, even though the permissible penalties are greater under the federal statute. I am also aware that the federal statute, unlike the state law, permits punitive damages.

McLaurin v. Brusturis, 320 F. Supp. 190 (E.D.Wis. 1970). That court concluded that the Wisconsin statute was substantially equivalent despite lower penalties and the absence of punitive damages. The cap on the civil penalties and requirement of a prior adjudication of a violation of the MFHL should likewise result in a substantial equivalency determination.

CONCLUSION

It is the position of the State of Montana that the MFHL meets the substantial equivalency standards pursuant to 24 CFR Part 115. In those areas where there is some variance in the exact language of the statutes, reference to the case law needs to be considered. The end result is that individuals who file with the Montana Human Rights Bureau will be afforded rights and remedies that are substantially equivalent to those afforded under the federal act. For the foregoing reasons, the State of Montana requests reconsideration of

Susan M. Forward

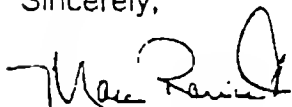
Page 9

July 25, 1997

Deputy Assistant Secretary Susan M. Forward's determination that the Montana Fair Housing Law is not substantially equivalent to the Federal Fair Housing Law.

Thank you for the opportunity to submit these comments.

Sincerely,



MARC RACICOT
Governor

cc: Pat Haffey, Montana Commissioner of Labor and Industry

Attachments:

Montana Fair Housing Law

McCann v. Trustees, Dodson School District, 816 P. 2d 435 (1991)

MacIntyre v. Devoe, 816 P. 2d 435 (1991)

Lovell v. State Compensation Mutual Ins. Fund, 860 P. 2d 95 (1993)

Brown v. Columbia Amusement Co., 6 P.2d 874 (1931)

Mt. Human Rights Division v. Billings, 649 P. 2d 1283 (1982)

1988 U.S. Code Cong. & Admin. News, 2194-2195

McLaurin v. Brusturis, 320 F. Supp. 190 (E.D. Wis. 1970)

DATE	NEWSPAPER PUBLISHER AND LOCATION	TITLE OF ARTICLE	COUNTY
05/19/95	The Independent Record Helena, MT	"Subdivisions Can't Ban Kids."	Lewis & Clark
05/20/95	The Great Falls Tribune Great Falls, MT	"Family Housing Bias Must End, Rights Panel Rules."	Cascade
07/04/95	The Great Falls Tribune Great Falls, MT	"Man Sues Landlord, Paper Over Church Housing Ad."	Cascade
08/02/95	The Missoulian Missoula, MT	"Flathead Officials, Landlords Accused of Discrimination."	Missoula
08/30/95	The Daily Inter Lake Kalispell, MT	"Protect Family Rights." (Letters To Editor)	Flathead
09/18/95	The Independent Record Helena, MT	"Housing Bias Hurts Communities."	Lewis & Clark
09/19/95	The Daily Inter Lake Kalispell, MT	"Development Fixes Adults Only Restriction."	Flathead
09/20/95	Bozeman Daily Chronicle Bozeman, MT	"Commission Calls For Lawsuit To Deal With Housing Discrimination."	Gallatin
09/20/95	The Missoulian Missoula, MT	"No Kids: Rights Commission Says Talk Is The Best Way To Cure Housing Discrimination."	Missoula
09/20/95	The Daily Inter Lake Kalispell, MT	"No-kids Rule, Human Rights Commission Balks At Suit Over Housing Discrimination."	Flathead
09/20/95	Associated Press Helena, MT	"No-kids Rule, Human Rights Commission Balks At Suit Over Housing Discrimination."	Lewis & Clark
09/28/95	The Daily Inter Lake Kalispell, MT	"County Human Rights Panel Reach Compromise."	Kalispell, MT

DATE	NEWSPAPER PUBLISHER AND LOCATION	TITLE OF ARTICLE	COUNTY
09/29/95	The Independent Record Helena, MT	"Builders: Impact Fees Will Push Projects Into Gallatin Valley. "	Lewis & Clark
09/29/95	Associated Press Kalispell, MT	"Strategy Meetings Should Be Open, Flathead County Says."	Flathead
09/29/95	The Independent Record Helena, MT	"Strategy Meetings Should Be Open, Flathead County Says."	Lewis & Clark
10/01/95	The Daily Inter Lake Kalispell, MT	"Grant Public Access." (Editorial)	Flathead
10/03/95	The Missoulian Missoula, MT	"HRC May Still Sue County."	Missoula
10/04/95	The Daily Inter Lake Kalispell, MT	"Housing Lawsuit Threat Still Remains."	Flathead
11/09/95	Hungry Horse News Kalispell, MT	"Human Rights Commission Plans Meeting On Housing Discrimina- tion."	Flathead
10/27/95	The Daily Inter Lake Kalispell, MT	"County State At Impasse Over Human Rights Dispute."	Flathead
11/08/95	The Daily Inter Lake Kalispell, MT	"Fair housing Forum Set By State Commission."	Flathead
11/15/95	The Daily Inter Lake Kalispell, MT	"Subdivisions Want To Remain Adults Only."	Flathead
11/16/95	The Great Falls Tribune Great Falls, MT	"Seniors Want To Be Able To Ban Children From Subdivision."	Cascade
Unknown	The Daily Inter Lake Kalispell, MT	"Elders Say They Love Kids - At A Distance."	Flathead
12/14/95	Daily Inter Lake Kalispell, MT	"Double Standard." (Editorial)	Flathead

DATE	NEWSPAPER PUBLISHER AND LOCATION	TITLE OF ARTICLE	COUNTY
01/01/96	Commencement of Enforcement Project in four target areas: Helena Valley, Gallatin Valley, Flathead Valley and Bitterroot Valley.		
03/27/96	The Independent Record Helena, MT	"Families Are Important." Governor: Let's Start Talking About Them	Lewis & Clark
01/09/96	Great Falls Tribune Great Falls, MT	"Realtors Balk At Settlement."	Cascade
05/03/96	Livingston Enterprise Livingston, MT	"Fair Housing Laws Cast Wide Net."	Park
06/13/96	The Daily Inter Lake Kalispell, MT	"Agency To Take Action Against Village Greens."	Flathead
06/14/96	The Daily Inter Lake Kalispell, MT	"Rights Commission Rejects Development's Claim of Exemption."	Flathead
07/07/96	The Daily Inter Lake Kalispell, MT	"Subdivision Sues Human Rights Panel."	Flathead
10/10/96	The Missoulian Missoula, MT	"Commission Settles Housing Complaints."	Missoula
10/10/96	The Daily Inter Lake Kalispell, MT	"Settlement Reached In Case Against Village Greens."	Flathead
11/17/96	Great Falls Tribune Great Falls, MT	"In Today's America, Kids Are Scapegoats For Their Parents."	Cascade
02/01/97	The Independent Record Helena, MT	"Panel: Cut Rights Commission."	Lewis & Clark
02/09/97	The Daily Inter Lake Kalispell, MT	"Fair-Minded Or Heavy-Handed?" Stung By HRC Charges Of Violating Fair Housing Rules, Realtors Complain Of Untrained Investiga- tors, Lack of Due Process.	Flathead

DATE	NEWSPAPER PUBLISHER AND LOCATION	TITLE OF ARTICLE	COUNTY
02/12/97	The Daily Inter Lake Kalispell, MT	"Administrator Defends Human Rights Agency."	Flathead
02/12/97	The Daily Inter Lake Kalispell, MT	"Realtor Settles With Human Rights Commission."	Flathead
02/14/97	The Independent Record Helena, MT	"Restore Rights Funding." (Editorial)	Lewis & Clark
02/18/97	The Billings Gazette Billings, MT	"Reins Tighten Around Rights Agency."	Yellowstone
02/18/97	The Independent Record Helena, MT	"Lawmakers Put Reins On Civil Rights Agency."	Lewis & Clark
02/19/97	Choteau Acantha Choteau, MT	"Support Human Rights Commission." (Letters From Our Readers)	Teton
02/19/97	Great Falls Tribune Great Falls, MT	"Human Rights Commission Would Would Be Curbed." (Legislature In Brief)	Cascade
02/19/97	The Independent Record Helena, MT	"Panel Considers Curbing Rights Commission."	Lewis & Clark
02/25/97	The Missoulian Missoula, MT	"Senate Reins In Human Rights Commission."	Missoula
02/25/97	Great Falls Tribune Great Falls, MT	"Senate Endorses Bill To Overhaul State Human Rights Commission."	Cascade
02/25/97	The Independent Record Helena, MT	"Senate OK's Bill To Restrain Human Rights Commission."	Lewis & Clark
02/26/97	The Daily Inter Lake Kalispell, MT	"Bill Restores Balance To Rights Enforcement." (Editorial)	Flathead

DATE	NEWSPAPER PUBLISHER AND LOCATION	TITLE OF ARTICLE	COUNTY
02/26/97	The Billings Gazette Billings, MT	"A Fallacy" Toole Blasts Rights Attack." (Session)	Yellowstone
03/05/97	Yellowstone Reflections Billings, MT	"Human Rights Council Abuses Powers."	Yellowstone
03/07/97	The Independent Record Helena, MT	"Punish Rights Commission." (Session)	Lewis & Clark
03/07/97	Great Falls Tribune Great Falls, MT	"Panel Won't Budge On Human Rights Budget."	Cascade
03/07/97	Associated Press Helena, MT	"Panel Won't Budge On Human Rights Budget."	Lewis & Clark
03/07/97	The Daily Inter Lake Kalispell, MT	"Rights Commission Gone Wrong."	Flathead
03/09/97	The Independent Record Helena, MT	"Rights Change Good, Cuts Not." (Opinions)	Lewis & Clark
03/13/97	Bozeman Daily Chronicle Bozeman, MT	"Disabled Residents Say Legislation Would Hurt Them."	Gallatin
03/13/97	The Independent Record Helena, MT	"Rights Agency Feels The Pinch."	Lewis & Clark
03/13/97	The Independent Record Helena, MT	"Rights Agency Punished For Flathead Fracas."	Lewis & Clark
03/16/97	The Independent Record Helena, MT	"Punishing Rights Commission May Backfire."	Lewis & Clark
03/20/97	The Daily Inter Lake Kalispell, MT	"House Refuses To Reverse Human Rights Cuts." (Montana Legislature)	Flathead

DATE	NEWSPAPER PUBLISHER AND LOCATION	TITLE OF ARTICLE	COUNTY
03/20/97	The Independent Record Helena, MT	"Rights Commission Budget Cut Sticks."	Lewis & Clark
03/20/97	The Independent Record Helena, MT	"Funding Not Restored For Human Rights Commission."	Lewis & Clark
03/23/97	The Independent Record Helena, MT	"A Conflict of Interest? Lawmaker Leading Charge Against Human Rights Commission Violated Discrimination Laws."	Lewis & Clark
03/26/97	The Billings Gazette Billings, MT	"Lawmakers Miss Mark." (Opinion)	Yellowstone
04/06/97	The Independent Record Helena, MT	"Rights Cuts Wrong." (Readers Alley)	Lewis & Clark
Unknown	The Independent Record Helena, MT	"Progressive' Rally, Protesters Decry Session's Record on Human Rights."	Lewis & Clark
Unknown	Great Falls Tribune Great Falls, MT	"Personal Grudge." (Our Readers Views)	Cascade
04/03/97	The Independent Record Helena, MT	"Newspaper Settles Discrimination Lawsuit."	Lewis & Clark
Unknown	Livingston Enterprise Livingston, MT	"Newspaper Settles Discrimination Lawsuit."	Park
04/06/97	The Daily Inter Lake Kalispell, MT	"House Limits Authority of HRC."	Flathead
04/12/97	Associated Press Helena, MT	"Senators Support Bill Tightening Reins On Rights Commission."	Lewis & Clark

DATE	NEWSPAPER PUBLISHER AND LOCATION	TITLE OF ARTICLE	COUNTY
Unknown	Great Falls Tribune Great Falls, MT	"Agency Does Its Job, Loses Funds." (Our Readers Views)	Cascade
05/20/97	The Independent Record Helena, MT	"Rights Commission Reined In."	Lewis & Clark
05/31/97	The Independent Record Helena, MT	"Human Rights Commission Reorganizes Under Labor Department."	Lewis & Clark
06/04/97	The Missoulian Missoula, MT	"Real Estate Agent Turns In License To State - Polson Man Was Target of Harassment Complaint."	Missoula
06/05/97	Lake County Leader Kalispell, MT	"Harassment Case Settled."	Flathead
06/15/97	The Billings Gazette Billings, MT	"Legislature "Curbs" Human Rights."	Yellowstone
06/18/97	The Associated Press Helena, MT	"Human Rights Complainants May Investigate Own Cases."	Lewis & Clark
06/18/97	Bozeman Daily Chronicle Bozeman, MT	"Human Rights Complainants May Investigate Own Cases."	Gallatin
06/18/97	Great Falls Tribune Great Falls, MT	"Human Rights Complainants May Have To Do Their Own Investigation."	Cascade
06/18/97	The Independent Record Helena, MT	"Human Rights Commission Reorganizes."	Lewis & Clark
06/21/97	Great Falls Tribune Great Falls, MT	"Thumbs Down, A Biased Investigation." (Editorial)	Cascade

DATE	NEWSPAPER PUBLISHER AND LOCATION	TITLE OF ARTICLE	COUNTY
06/21/97	The Associated Press Helena, MT	"Human Rights Complainants May Have To Do Their Own Investigation."	Lewis & Clark
07/10/97	Great Falls Tribune Great Falls, MT	"State May Lose Funds To Review Housing Gripes."	Cascade
07/11/97	The Independent Record Helena, MT	"Feds Say Montana May Lose Authority."	Lewis & Clark
07/12/97	The Independent Record Helena, MT	"Tentative Settlement Reached Over Ads."	Lewis & Clark
07/15/97	The Independent Record Helena, MT	"New Quarters Dismay Human Rights Commission. They Aren't Accessible To Handicapped People."	Lewis & Clark
07/15/97	Great Falls Tribune Great Falls, MT	"Congressmen Protest Federal Cut."	Cascade
07/15/97	The Independent Record Helena, MT	"Rights Site Isn't Funny" Editorial ADA Access	Lewis & Clark
07/15/97	The Independent Record Helena, MT	"Congressmen Protest Cutoff Over Commission."	Lewis & Clark
07/15/97	The Daily Inter Lake Kalispell, MT	"Commission Doesn't Like New Quarters."	Flathead
07/15/97	Bozeman Chronicle Bozeman, MT	"Office Controversy, Disabled Won't Be Able To Access State Agency."	Gallatin
07/15/97	Bozeman Chronicle Bozeman, MT	"Coalition Just Looking For Equal Treatment For Disabled."	Gallatin

1 Douglas G. Harkin, District Judge
 2 Department 4
 3 Fourth Judicial District
 4 Missoula County Courthouse
 5 200 West Broadway Street
 6 Missoula, MT 59802-4292
 7 (406) 523-4774

FILED JUL 09 1997

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BY JILL CARLSON
 CLERK

JUL 11 1997

HUMAN RIGHTS COMMISSION

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

9 ANNE L. MacINTYRE, Administrator)
 10 of the Montana Human Rights)
 11 Commission, ex rel. Western)
 12 Montana Fair Housing Board, Inc.,)

Plaintiff,)

vs.)

13 CLAYTON DEVOE, an individual,)
 14)

Defendant.)

Department No. 4/87
 Cause No. 81532

MEMORANDUM AND ORDER

16 This matter comes before the Court upon the Plaintiff's
 17 motion to strike and the Defendant's motion to dismiss [which
 18 this Court converted to a motion for summary judgment]. Both
 19 parties have briefed the motions. Defense counsel has waived
 20 oral argument and the matter is deemed submitted and ready for
 21 ruling.

22 BACKGROUND

23 Concerned Citizens Coalition (hereinafter, CCC) filed a
 24 housing discrimination complaint against Defendant Clayton DeVoe
 25 with the Montana Human Rights Commission (hereinafter, MHRC) on
 26 February 8, 1993. The complaint was amended on May 11, 1995,
 27 inserting Western Montana Fair Housing Board, Inc. (hereinafter,

1 WMFHB) as the charging party. On January 9, 1995, the
2 Commission staff certified the case for hearing. On June 8,
3 1995, Defendant Clayton DeVoe filed a Notice of Election of
4 Civil Action, pursuant to §49-2-510(4)(a), M.C.A. Accordingly,
5 the MHRC filed its complaint and demand for jury trial on behalf
6 of the WMFHB in this Court on July 6, 1995. The complaint
7 alleges that Clayton DeVoe violated the state and federal
8 housing laws for discrimination based on familial status.

9 Specifically, the complaint alleges that Clayton DeVoe or
10 his agents unlawfully inquired about the familial status of
11 persons seeking to rent or lease housing accommodations for the
12 purpose of discriminating on the basis of familial status.
13 Plaintiff alleges that such discrimination is in violation of
14 §49-2-305(1) and (4), M.C.A. and 42 U.S.C. §3605. The complaint
15 further alleges that Clayton DeVoe or his agents unlawfully
16 published or caused to be published advertisements that
17 indicated a preference, limitation, or discrimination against
18 persons seeking to lease or rent housing accommodations based
19 on age and familial status, in violation of §49-2-305(3), M.C.A.
20 and 42 U.S.C. §3604.

21 Clayton DeVoe's answer alleges lack of subject matter
22 jurisdiction by this Court because the MHRC is not an aggrieved
23 person, and therefore lacks standing to assert the cause of
24 action. Mr. DeVoe contends that all fair housing activities
25 were conducted by CCC. Clayton DeVoe has filed a motion to
26 dismiss, which this Court converted to a motion for summary
27 judgment, which addresses those issues. The Court allowed

1 further briefing and submission of additional facts by
2 affidavit.

3 Plaintiff has filed a motion to strike Section D of
4 Defendant's supplemental brief:

5 MOTION TO STRIKE

6 The Plaintiff's motion to strike argues that Section D of
7 the Defendant's final brief should be stricken for the following
8 reasons: (1) the arguments and allegations contained in Section
9 D are "completely irrelevant" to the motion pending before the
10 Court; (2) the deposition testimony of Andrea Strowd which is
11 submitted in support of this section of the brief is
12 "inadmissible and irrelevant" to the standing of the WMFHB as
13 an aggrieved party in the complaint; (3) the deposition
14 testimony of Stephen LaRocque is "inadmissible and irrelevant"
15 to the standing of the WMFHB as an aggrieved party; (4) the
16 report of the HRC investigator is "inadmissible and irrelevant"
17 to the standing of WMFHB as an aggrieved party; and (5) the
18 brief contains numerous statements of fact which are not
19 supported by the record.

20 A. Section D of the Brief:

21 Plaintiff specifically objects to the following statement
22 provided in Section D of Defendant's final brief:

23 As we all have read in the news, the Montana
24 Legislature is presently in the process of gutting
25 the funding of the HRC because of the gross
improprieties apparent in its handling of complaints
similar to those involved here.

26 Plaintiff argues that "any political gunfire over HRC funding
27 and procedures" is not relevant, and the Court should not

1 tolerate Defendant's conduct. Plaintiff argues that a brief may
2 be stricken if it relies on matters not in the record.
3 Federated Mutual Insurance Company v. Brent Anderson, d/b/a
4 Conifer Logging, 277 Mont. 134, 920 P.2d 97 (1996). In
5 addition, although evidentiary standards are relaxed in summary
6 judgment proceedings, the evidence must still be admissible.
7 Rule 56(e), M.R.Civ.P.

8 Upon review of the brief, the Court agrees with Plaintiff
9 in that the issues raised by Section D of the brief are not
10 relevant to determining standing under Defendant's motion to
11 dismiss, and therefore Section D of Defendant's Final Brief is
12 stricken.

13 B. Deposition of Andrea Strowd:

14 Andrea Strowd was an HRC employee who conducted an informal
15 investigation of the administrative complaint in this matter.
16 Plaintiff contends that the testimony provided is irrelevant to
17 the standing of the WMFHB in this suit. Under the Montana Human
18 Rights Act, the role of the investigator is merely to informally
19 investigate the matters set out in a filed complaint, §49-2-504,
20 M.C.A.; and to determine whether the allegations are supported
21 by substantial evidence. §49-2-504, M.C.A. This investigation
22 is not binding on any party. It is not a final adjudication.
23 Therefore, the opinions and findings of the HRC investigator
24 have been generally excluded from court proceedings. Crockett
25 v. City of Billings, 234 Mont. 87, 761 P.2d 813 (1988); Rule
26 803(8)(iii), M.R.Evid.; Mahan v. Farmer's Union Central
27 Exchange, Inc., 235 Mont. 410, 768 P.2d 850 (1989).

1 The Court agrees that the issues raised by the testimony
2 of Andrea Strowd are not relevant to the issue of standing
3 presenting pending before the Court on Defendant's motion to
4 dismiss, therefore it is stricken.

5 C. Deposition of Stephen LaRocque:

6 Plaintiff alleges that Defendant's introduction of a
7 "snippet" from the lengthy unpublished deposition of Stephen
8 LaRocque for the purpose of denying certain unspecified
9 statements Ms. Strowd attributed to him is nothing more than a
10 way to attack the credibility of the attributions, and that the
11 credibility of a witness is not a matter resolved on a summary
12 judgment motion. Heiat v. Eastern Montana College, 275 Mont.
13 322, 912 P.2d 787 (1996).

14 The "snippet" of deposition of Mr. LaRocque is not relevant
15 to the issue of standing and therefore is stricken.

16 MOTION TO DISMISS, CONVERTED TO SUMMARY JUDGMENT MOTION:

17 A. Parties' Arguments Re: The Issue of Standing:

18 1. "Distinct or Palpable" Injury:

19 Clayton DeVoe argues that in order for MHRC to have
20 standing, they must demonstrate a "distinct and palpable" injury
21 that is traceable to a defendant's actions. Havens Realty Corp.
22 v. Coleman, 455 U.S. 363, 372, 102 S.Ct. 1114 (1982). An
23 organization's abstract concern with the subject matter cannot
24 substitute for the concrete injury required. Spann v. Colonial
25 Village, Inc., 899 F.2d 24, 27 (D.C. Cir. 1990).

26 Clayton DeVoe alleges that neither the MHRC nor Anne
27 MacIntyre have claimed any damages resulting from his alleged

1 actions. The only damages enumerated in the complaint were for
2 the WMFHB, and those damages were identified as: (1) incurred
3 expenses, (2) resource diversion, and (3) denial of the
4 opportunity to refer clients to Clayton DeVoe's property.

5 The MHRC argues that a fair housing organization has
6 standing as a relator in a civil action pursuant to §49-2-501,
7 M.C.A. This statute specifically provides that a complaint may
8 be filed by or on behalf of any person claiming to be aggrieved
9 by any discriminatory practice prohibited by this chapter.

10 2. MHRC - "Independent" Status:

11 Clayton DeVoe alleges that WMFHB did not have independent
12 existence at the time the initial complaint was filed with the
13 MHRC. WMFHB was merely a "corporate shell" controlled by CCC.
14 He alleges that WMFHB had no funding, no resources, and
15 therefore could not have had the opportunity to refer clients
16 to his property. Citing, *Deposition of Susan Fifield, Executive*
17 *Director WMFH*, pp. 66, pp. 78, and pp. 82. Clayton DeVoe argues
18 that the WMFHB cannot stand in the place of CCC and attempt to
19 recover these damages.

20 The WMFHB argues that it has "independent" status and
21 therefore standing based upon the diversion of its own funds
22 from the date of transfer. The WMFHB has been acting on its own
23 since mid-1993.

24 3. Assignment of Cause of Action:

25 The MHRC argues the CCC validly "assigned or transferred"
26 its interest in the action on December 7, 1993, therefore the
27 action survives pursuant to §27-1-501, M.C.A. and Rule 17,

1 M.R.Civ.P. The MHRC alleges that CCC has ratified this action.
2 Exhibit 1, Attachment Exhibit B, Exhibit 2. The MHRC alleges
3 that legal title in the claim is the only requirement to
4 constitute the assignee as the real party in interest. Wash.
5 Water Power Co. v. Morgan Electric Co., 152 Mont. 126, 448 P.2d
6 683 (1968).

7 In response to this argument, Clayton DeVoe argues that the
8 Montana Supreme Court has ruled that assignments of tort-type
9 causes of action are not valid. Allstate Ins. Co. V. Reitler,
0 192 Mont. 351, 628 P.2d 667, 670 (1981); Jefferson Co. Dept. of
1 Social Services v. Colorado State Dept. of Inst., 784 P.2d 805
2 (Colo. App. 1984); and Youngblood v. American States Ins. Co.,
3 262 Mont. 392, 866 P.2d 203 (1993).

4 Clayton DeVoe also argues that the purpose of Rule 17(a),
5 M.R.Civ.P. is not to cure a lack of standing. A party plaintiff
6 cannot acquire standing after a complaint is filed because a
7 party invoking the jurisdiction of the court must have a
8 personal stake in the outcome of the controversy, Flast v.
9 Cohen, 392 U.S. 83, 101, 88 S.Ct. 1942 (1968); and this personal
0 stake must exist at the time the action is commenced. U S.
1 Parole Comm'n v. Geraghty, 445 U.S. 388, 100 S.Ct. 1202 (1980).

2 B. Court Analysis - Standing Issue:

3 1. Federal Case Law:

4 As stated by the Plaintiff, the fair housing enforcement
5 provisions of the Montana Human Rights Act, §49-2-101, M.C.A.,
6 et. seq., have not been construed by the Montana Supreme Court.
7 The Montana Supreme Court has, however, found that reference to

1 pertinent federal civil rights case law is useful and
2 appropriate. McCann v. Trustees Dodson School District, 249
3 Mont. 362, 364, 816 P.2d 435, 437 (1991).

4 Montana's state fair housing laws are similar to the
5 federal fair housing laws found under 42 U.S.C.
6 §3610(f)(3)(A)(iv). The Montana Human Rights Commission
7 investigates and issues administrative findings in both state
8 and federal fair housing complaints. The standing issue has
9 been raised a number of times in actions under the Fair Housing
10 Act Amendments of 1988, as amended, Title VIII of the Civil
11 Rights Act of 1968, 42 U.S.C. §3601 et seq.

12 Standing under the fair housing laws is intended to be as
13 broad as the constitution will permit. Trafficante v.
14 Metropolitan Life Ins. Co., 409 U.S. 205, 209, 93 S.Ct. 364, 366
15 (1972); and Gladstone Realtors v. Village of Bellwood, 441 U.S.
16 91, 99 S.Ct. 1601, 1608, 1617 (1979).

17 Standing, pursuant to Article III, requires that a
18 plaintiff has suffered an (1) injury in fact which is (a)
19 concrete and particularized, and (b) actual or imminent; which
20 (2) is fairly traceable to the challenged act, and (3) likely
21 to be redressed by a favorable decision. These standing
22 requirements apply when an organization asserts standing to sue.
23 Havens Realty Corp. v. Coleman, 455 U.S. 363, 378, 102 S.Ct.
24 1114, 1124 (1982).

25 The standing for a fair housing organization whose testing
26 programs have established discriminatory housing practices was
27 first established in Havens Realty Corp. v. Coleman, 455 U.S.

1 363, 378, 102 S.Ct. 1114 (1982). Organizational standing based
2 on discriminatory housing advertising was first established in
3 Spann v. Colonial Village, Inc., 899 F.2d 24 (D.C. Cir.), cert.
4 denied, 498 U.S. 980, 111 S.Ct. 509 (1990). For most claims,
5 standing involves a "prudential" doctrine as well. This
6 "prudential" doctrine requires that the plaintiff assert his own
7 legal rights and interests. Valley Forge Christian College v.
8 Americans United for Separation of Church and State, Inc., 454
9 U.S. 464, 474, 102 S.Ct. 752 (1982). However, standing pursuant
10 to the Fair Housing Act is as broad as is permitted by Article
11 III of the Constitution. Gladstone Realtors v. Village of
12 Bellwood, 441 U.S. 91, 108, 99 S.Ct. 1601 (1979). To that end,
13 federal courts lack the authority to create "prudential"
14 barriers to standing in suits brought under the Fair Housing
15 Act. Havens Realty Corp. v. Coleman, 455 U.S. 363, 372, 102
16 S.Ct. 1114 (1982); cited by Hispanics United of Dupage County,
17 et al., v. Village of Addison, Illinois, No. 94 C 6075 (N.D.
18 Ill., E.D., March 19, 1997, attached as Exhibit D to Plaintiff's
19 Supplemental Brief.

20 2. Conclusion:

21 WMFHB was incorporated on December 21, 1989, as Missoula
22 Fair Housing Board, Inc. Affidavit of Betty Zander, Exhibit A,
23 Plaintiff's Supplemental Brief. The Articles of Incorporation
24 specify that its purpose is to "support, encourage and assist
25 equal access to housing in Missoula." Fifield Affidavit,
26 Exhibit B, Plaintiff's Supplemental Brief. It contracted with
27 the Montana Human Rights Commission in January 1999 on a housing

1 project to determine the extent of housing discrimination
2 against Native Americans. *Zander Affidavit, Exhibit A,*
3 *Plaintiff's Supplemental Brief.* It has an office in Missoula.
4 *Zander Affidavit.*

5 In October of 1990, WMFHB entered into an agreement with
6 CCC, a fair housing organization located in Great Falls,
7 Montana, to use CCC's HUD funding and the WMFHB's office to
8 operate what both organizations called the Western Montana Fair
9 Housing Program. *Zander Affidavit, Exhibit A, Plaintiff's*
10 *Supplemental Brief.* Under the agreement, Susan Fifield was
11 hired as a paid employee of CCC, but worked out of the WMFHB
12 office in Missoula and reported to both the CCC executive
13 director and the WMFH board of directors. *Fifield Affidavit,*
14 *Exhibit B, Plaintiff's Supplemental Brief.* In August 1992,
15 CCC's funding for the WMFH program ran out, and it became
16 essentially a volunteer operation. *Fifield Affidavit, Exhibit*
17 *B.* Susan Fifield continued to volunteer her services to the
18 program at the WMFHB office, though she was no longer a CCC
19 employee. WMFHB paid her out-of-pocket expenses for travel and
20 photocopying. *Fifield Affidavit, Exhibit B.*

21 In April of 1993, CCC withdrew from its participation in
22 the Western Montana Fair Housing Program. *Fifield Affidavit,*
23 *Exhibit B.* The fair housing testing which forms the elements
24 of the present action were conducted in February, May, and June
25 of 1992. The initial administrative complaint was filed with
26 the Montana Human Rights Commission in February of 1993 while
27 the Western Montana Fair Housing Program was still underway,

1 using volunteer labor and substantially reduced support from
2 CCC. Zander Affidavit, Exhibit A, Plaintiff's Supplemental
3 Brief.

4 WMFHB filed an amended complaint with the Montana Human
5 Rights Commission alleging that it was aggrieved by the
6 discriminatory acts and practices of the Defendant, which
7 included: (1) discriminatory advertisements which discouraged
8 equal access to Defendant's rental housing for families with
9 children; and (2) specific acts of discrimination against
10 families with children, established by fair housing testing by
11 its staff and volunteers in February and June of 1992. WMFHB
12 alleged that it was aggrieved by these actions because:

13 D. One of the goals of Western Montana Fair Housing
14 is to eliminate housing discrimination. Western
15 Montana Fair Housing is aggrieved by the actions
16 of Respondent because Respondent's actions
17 frustrate our efforts to assist equal access to
18 fair housing through counseling, referral, and
enforcement activities of the Western Montana
Fair Housing program. Western Montana Fair
Housing has had to devote significant resources
to identify and counteract the Respondent's
discriminatory practices.

19 E. Western Montana Fair Housing is aggrieved by the
20 actions of the Respondent because the actions
frustrate us in our efforts to achieve fair
housing in Montana.

21 Amended Administrative Complaint, Exhibit 2, Brief in Response
22 to Defendant's Motion to Dismiss.

23 The affidavits and depositions cited by the Plaintiff
24 reveal that either or both CCC and WMFHB had the necessary
25 standing to bring this action. WMFHB's injuries stems from the
26 diversion of its staff and resources, drawn from both CCC and
27 other sources, away from its primary educational and

1 preventative purposes, to the intervention required to remedy
2 the effects of the Defendant's discriminatory actions. The
3 affidavits of Zander and Fifield establish a history and
4 sustained existence of WMFHB since 1988. During the time that
5 CCC was paying Fifield's salary and WMFH's expenses, WMFHB had
6 an active volunteer force, some of whom participated in testing
7 Clayton DeVoe's rental practices. The volunteers were obtained
8 through the efforts of WMFHB. One of the testers was Robbin
9 Roshi, the president of WMFH at the time she tested. Another
10 tester, Peg Johannes, was an intern from the local vocational-
11 technical college. Another tester, Brandie Gast-LeVoie, was a
12 summer youth employee funded by the Missoula Human Resource
13 Council. *Fifield Affidavit, Zander Affidavit.* Zander's
14 affidavit confirms WMFHB's elements of injury, i.e., diversion
15 of resources to supporting the complaint, paying independent
16 attorney fees in the litigation, and having to conduct community
17 re-education programs. *Zander Affidavit.*

18 WMFHB has demonstrated that, pursuant to Article III, its
19 injuries are concrete, actual, and traceable to the acts of the
20 Defendant, therefore, they have standing pursuant to Article III
21 to maintain the action. The activity which Clayton DeVoe was
22 allegedly engaged in was not an "abstract concern" of WMFHB, as
23 alleged by Clayton DeVoe, but rather was a concrete concern
24 which was diverting time and resources from WMFHB's goals of
25 education on discriminatory practices. MHRC, et. al., WMFHB has
26 standing to pursue this action pursuant to §49-2-501, M.C.A.
27

ORDER

Based upon the foregoing, the Plaintiff's motion to strike:
(1) Section D of the Defendant's final brief, (2) the deposition testimony of Andrea Strowd; and (3) the deposition testimony of Stephen LaRocque is GRANTED.

The Defendant's motion to dismiss based upon the Plaintiff's lack of standing, which this Court converted to a motion for summary judgment, is DENIED.

DATED this 9th day of July, 1997.


DOUGLAS G. HARKIN
District Judge

cc: Timothy C. Kelly
SPECIAL ASSISTANT ATTORNEY GENERAL ✓
MONTANA HUMAN RIGHTS COMMISSION

Bradley J. Luck
Robert C. Lukes ✗
GARLINGTON, LOHN & ROBINSON

BEFORE THE HUMAN RIGHTS COMMISSION

OF THE STATE OF MONTANA

Montana Fair Housing, Inc.

) Case # 9702008073

)

)

Charging Party,

)

)

) COMPLAINT OF DISCRIMINATION

versus

)

)

RECEIVED

GTE Directories Corporation and ALLTEL

)

Publishing Corporation,

)

)

MAR 26 1997

Respondents.

)

) HUMAN RIGHTS COMMISSION

COMPLAINT OF HOUSING DISCRIMINATION

Charging Party

1. Charging party is Montana Fair Housing, Inc., which is primarily engaged in the business of educating people about, researching, and otherwise promoting equal housing opportunities throughout the state of Montana. The charging party's mailing address is 1211 Mount Avenue, Missoula MT 59801 and its phone number is 406/542-2611. The authorized representative of the association is Sue Fifield.

Respondent

2. Respondent is GTE Directories Corporation. On information and belief, GTE Directories Corporation also does business as PTI Communications. Its address and business phone number are North 100 Mullan Street, Spokane Washington 99206, 509/922-3111. One of the addresses for PTI Communications is 216 E. 1st Street, Polson, Montana. The address and phone number of ALLTEL Publishing Corporation is unknown but is believed to be affiliated with GTE Directories Corporation. On information and belief, respondents are licensed to do business in the state of Montana and are primarily engaged in the business of making, printing, publishing and distributing phone directories which are distributed in Flathead, Sanders, Lake, Missoula and other Montana counties.

Complaint of Discrimination

3. In April 1991, April 1992, April 1993, April 1994, April 1995, and April 1996 respondents printed, published and caused to be distributed housing advertisements in the yellow pages of its "Flathead Valley" phone directories which indicated a preference, limitation, or discrimination against persons because of age and/or familial status. The ads included advertisements stating that the Glacier Village Greens residential subdivision is an "adult recreational community." The ads clearly stated to the average reader that families with children were restricted from residing at the subdivision.
4. Respondents published the discriminatory housing advertisement in its April 1996 phone directory contrary to the express written instructions of the person or persons placing the advertisement for publication.
5. Respondents distributed or caused to be distributed the discriminatory housing ads contained in its phone directories in 1991, 1992, 1993, 1994, 1995 and 1996 to more than 5,000 phone consumers, including residents, households and businesses, located in Flathead County, Sanders County, Lake County, Missoula County and other counties in the state of Montana.
6. Respondents caused to be distributed the discriminatory housing advertisement in its April 1996 phone directory throughout 1996 and continuing to the present.
7. Respondents have continuously failed, refused and neglected to include or use in their published phone directories or other written advertising communications the Publishers' "Equal Housing Opportunity" Notice as set forth in 24 CFR §109.30(d)(3) although that Notice is strongly recommended by the U.S. Government for use by publishers of housing advertisements and is now the generally accepted practice in the respondents' industry.
8. The acts of respondent described in the preceding paragraphs #3-7 were taken willfully and with conscious indifference to or disregard of the equal housing rights of families with children and were in violation of the Montana Human Rights Act, §49-2-305(3), MCA, and the federal Fair Housing Act, 42 USC §3604(c) and further constituted aiding and abetting others in the commission of an unlawful discriminatory act in violation of §49-2-302, MCA.

Aggrieved Parties

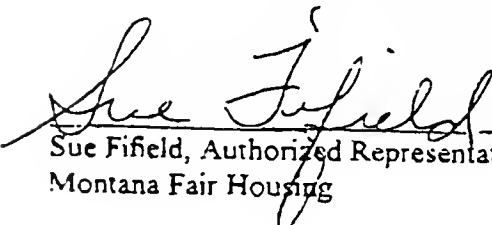
9. Montana Fair Housing brings this administrative complaint on its own behalf and on behalf of families with children, including persons who are members of the association, who have been misinformed about and otherwise denied their rights to equal housing opportunities as a result of the discriminatory practices of respondent described above.

10. As a result of the discriminatory practices of respondent described in the above complaint of discrimination, Montana Fair Housing has had and will have to divert resources to the investigation and elimination of the discriminatory publishing practices of respondent, has had and will have to expend resources to educate housing consumers and providers concerning their rights and responsibilities under the fair housing laws including fair housing advertising laws, and will lose a portion of its good will in the community and otherwise frustrate its organizational purposes as a result of having to bring this action against respondent.

Request for Relief

11. Charging party seeks an order enjoining respondent from engaging in any further discriminatory advertising, publishing or distributing practices in violation of state or federal fair housing laws.
12. Charging party seeks an order requiring respondent to publish an equal housing opportunity notice in all future issues of its phone directories published or distributed in any Montana county, a notice of available information from Montana Fair Housing, Inc., and from the Montana Human Rights Commission and from the U.S. Department of Housing and Urban Development, and a one page article in its next three annual published phone directories explaining to readers and advertisers their rights and responsibilities under state and federal fair housing laws.
13. Charging party seeks an order awarding the charging party reimbursement of all its costs and expenses, including fees, in taking action to investigate and eliminate the discriminatory practices of respondent and such other relief as is necessary to rectify the harm, pecuniary or otherwise, done to persons who were discriminated against by the respondent.
14. Charging party seeks such other relief pursuant to §49-2-506 and §49-2-510, MCA, and the federal fair housing laws as is just and equitable.

Signed this 26th day of March, 1997


Sue Fifield, Authorized Representative
Montana Fair Housing

VERIFICATION

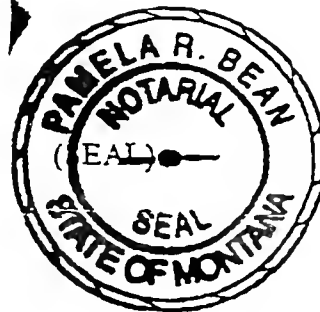
State of Montana)
)ss:
Missoula County)

Sue Fifield states on oath the foregoing complaint of discrimination is true and accurate to the best of her knowledge and belief

Signature: Sue Fifield

Subscribed and sworn to before me
this 26 day of March, 1997.

Pamela R. Bean
Notary Public
Residing at Missoula, Mt
My commission expires: 4/10/99



BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

HOUSING COMPLAINT OF DISCRIMINATION

Susan K. Fifield obo MT Fair Housing,)

Charging Party,)

vs.)

Complaint Number 9702008186

Bitterroot Gateway Trailer)

Park, Terry Burkholder)

Respondent.)

Charging Party:

I am Susan K. Fifield, Montana Fair Housing, the charging party in this complaint. My address is 904 A Kensington Avenue, Missoula, MT 59801 My telephone number is (406) 542-8223.

Other Aggrieved Parties:

All families with children

Respondent:

Bitterroot Gateway Trailer Park and Terry Burkholder are the respondents in this complaint. Its address is Lolo, MT 59847. Its telephone number is (406) 273-6034.

Respondent Type:

- ☒ Private Individual
 ☒ Owner ☐ Manager ☐ Other (Specify: _____)
☐ Property Management Organization
☐ Real Estate Sales Organization
☐ Banking Mortgage Organization
☐ Public Housing Authority

Property Information:

Property Address: Lolo, Montana

Property Name (if any): Bitterroot Gateway Trailer Park

Property is being: Rented ☒ Sold ☐

Owner resides there: Yes ☒ No ☐

Kind of Property:

- | | |
|-------------------------------------------------------|-------------------------------------------------------|
| <input type="checkbox"/> Residential Unit | <input checked="" type="checkbox"/> Mobile Home Court |
| <input type="checkbox"/> Commercial Property | <input type="checkbox"/> Single Family Home |
| <input type="checkbox"/> Vacant Land | <input type="checkbox"/> Unit of 2 families |
| <input type="checkbox"/> Mobile Home | <input type="checkbox"/> Unit of 3 - 5 families |
| <input type="checkbox"/> Unit of more than 5 families | |

Cause of Discrimination:

- ☐ Age ☐ Sex
- ☐ Creed or Religion
- ☐ Race, National Origin
or Color
- ☐ Physical or Mental Disability
- ☐ Political Belief
- ☐ Marital Status
- ☐ Pregnancy
- ☐ Retaliation
- ☒ Familial Status

Date most recent or continuing discrimination took place:

January, 1997

The Particulars of my complaint are:

- I. See Attached Complaint
- II. See Attached Complaint
- III. I believe I have been discriminated against in the area of housing because of familial status, in violation of the Montana Human Rights Act, Title 49, Chapter 2, MCA; and Title VIII of the Civil Rights Act of 1968, as amended for the following reasons:

See Attached complaint

FS-

DECLASSIFIED

~~JUN 05 1987~~

HUMAN RIGHTS COMMISSION
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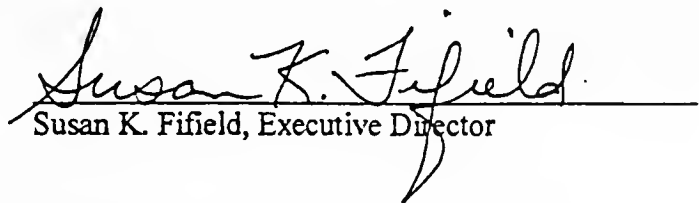
Housing Discrimination Complaint

1. This complaint is filed in accordance with 42 USC §3610 with the U.S. Department of Housing and Urban Development.
2. This complaint is filed by Montana Fair Housing, Inc., on its own behalf, on behalf of the families of its employees and associates and members who have children and on behalf of all other families with children who have been denied housing opportunities as a result of the discriminatory practices of the respondents. Montana Fair Housing (MFH) is a nonprofit corporation whose primary purpose is to promote equal housing throughout the state of Montana through research, investigation, counseling, and other activities designed to identify, preserve and create housing opportunities that are available without regard to race, color, creed, religion, national origin, gender, disability, marital status, familial status or age. MFH is located at 904A Kensington Avenue, Missoula, Montana 59801. Its phone number is 406/542-2611. The authorized representative of MFH is Susan K. Fifield.
3. This complaint is filed against respondent Terry Burkholder and all other persons doing business as or having an ownership interest in the Bitterroot Gateway Trailer Park located in Lolo, Montana. The address and phone number for the respondent is Bitterroot Gateway Trailer Park, Lolo, Montana 59847. The phone number of the respondent is 406/273-6034.
4. During the period from March 1989 through at least January 1997, respondents have managed and operated and maintained all or a portion of the dwellings (housing accommodations) located at the Bitterroot Gateway Trailer Park as adults only housing and in a manner that denies equal housing opportunities to families with children.
5. During the period from March 1989 through at least June 6, 1996, respondents have made, printed, or published or caused to be made, printed or published notices, statements, and advertisements regarding housing opportunities at Bitterroot Gateway Trailer Park that indicate preferences, limitation and discrimination against families with children. Respondents specifically caused discriminatory advertisements to be published during the first week in June 1996 which stated that housing opportunities located at the Bitterroot Gateway Trailer Park were located in an "adult court."
6. The discriminatory practices described above were intentional and willful and constitute continuing violations of federal and state fair housing laws and also constitute a pattern and practice of resistance to the equal housing rights of

families with children, including families of the employees, associates and members of Montana Fair Housing.

7. As a result of the discriminatory practices of respondents described above:
 - (a) families of the employees, associates and members of MFH were denied the opportunity to consider or inspect housing accommodations at the Bitterroot Gateway Trailer Park in the past and will be denied that opportunity in the future;
 - (b) the supply of housing for those families with children has been unlawfully limited; and
 - (c) the price of such housing has been artificially inflated in the Missoula housing market.
8. As a further result of the discriminatory practices of respondents described above, MFH has had to divert its resources to investigate complaints of housing discrimination against respondents and to otherwise counteract the discrimination practiced by respondents and has been denied the opportunity of referring persons in need of housing to respondents' properties because those properties are not available on an equal opportunity basis.
9. MFH requests an order that:
 - a) respondent Burkholder and all other respondents cease and desist from their discriminatory practices;
 - b) respondents affirmatively market housing opportunities to families with children for a period of time equal to the period when respondents engaged in unlawful discrimination;
 - c) the families of employees, associates and members of MFH and similarly situated families harmed by respondents' discrimination be awarded compensatory damages for their increased costs of housing in the Missoula market;
 - d) MFH be awarded compensatory damages for the diversion of its resources;
 - e) MFH be awarded punitive damages to deter the respondents and other housing providers from similar unlawful conduct in the future; and
 - f) MFH be paid their costs, including attorney fees, incurred in bringing this action.

The undersigned, Susan K. Fifield, as authorized representative for Montana Fair Housing, Inc., states on oath that the foregoing housing discrimination complaint is true and accurate to the best of her knowledge and belief.


Susan K. Fifield, Executive Director

Signed and Sworn to before me this 4th day of June, 1997.



Pamela R. Bean
Notary Public for the State of Montana
My commission expires: 4/10/99
Residing at: Missoula, Montana

SETTLEMENT AGREEMENT

This agreement is made by and between the Montana Human Rights Commission (hereinafter "Commission") and Glacier Village Greens, Inc. (hereinafter "Glacier Village"). The parties hereby stipulate and agree as follows:

1. This agreement resolves all allegations by the Commission that Glacier Village has engaged in a pattern and practice of age and familial status discrimination as described in the May 16, 1995 and June 12, 1996 letters to Glacier Village from Anne L. MacIntyre, Administrator, Montana Human Rights Commission, the May 31, 1996 Investigative Report prepared by the Commission's Fair Housing Enforcement Project Staff and the July 31, 1996 complaint in Montana Human Rights Commission v. Glacier Village Greens, Inc. et al., Cause No. BDV 96 964, First Judicial District Court. This agreement constitutes a full and complete settlement of all allegations of discrimination under the Montana Human Rights Act, the Federal Fair Housing Act, 42 U.S.C. §§3601, et seq., and the Americans with Disabilities Act as alleged in the documents referenced in this paragraph.

2. Glacier Village adopted a restrictive covenant in 1991 for phase II of the Glacier Village Greens Subdivision prohibiting occupancy by persons 17 years of age or younger. The restrictive covenant was reviewed and approved by Flathead County. In addition, Glacier Village advertised the "adult" status of the Glacier Village Green Subdivision in some of its advertising.

3. The Commission notified Glacier Village by letter dated May 16, 1995 that its restrictive covenant violated the Montana Human Rights Act. Glacier Village acted to repeal the restrictive covenant prohibiting occupancy by minors and the restrictive covenant was repealed in September of 1995. Glacier Village also ceased advertising the Glacier Village Greens Subdivision as an "adult community" during the summer and fall of 1995.

4. Glacier Village admits that the restrictive covenant prohibiting occupancy of the Glacier Village Greens Subdivision by persons seventeen years of age or younger and certain marketing activities indicating that families with children were excluded from the Subdivision violated the Montana Human Rights Act in the absence of a valid exemption under Section 49-2-305(10)(c), MCA, of the Montana Human Rights Act. Glacier Village and its individual officers and shareholders deny, however, that the violations were willful, intentional or purposeful. Glacier Village further denies that it has engaged in a pattern and practice of age and/or familial status discrimination under the Montana Human Rights Act.

5. Glacier Village agrees to undertake and perform the following remedial actions:

A. Glacier Village will, on or before January 1, 2000, spend fifteen thousand dollars (\$15,000.00) on advertising which includes the language specified in paragraph 5(B). Glacier Village also agrees that:

(i) At least six thousand dollars (\$6,000.00) of the advertising expenditure agreed to in this paragraph shall be completed on or before September 1, 1997; and

(ii) At least twenty-five percent (25%) of the total advertising expenditure agreed to in this paragraph will be spent in markets outside Flathead County. It is understood and agreed that television advertising on the Kalispell television station qualifies as advertising outside the Flathead County market.

B. Print advertising required under paragraph 5(A) shall contain the following language:

Equal Housing Opportunity. Property in the Glacier Village Greens Subdivision is available for sale or occupancy regardless of familial status, sex, marital status, age, race, color, national origin, mental or physical handicap, religion or creed. Families with children are welcome.

The required language may be abbreviated if necessary for insertion in available space in the multiple listing service ("MLS") directory. Any abbreviation will include, as a minimum, the words "families with children are welcome" and the abbreviation for equal housing opportunity ("EHO"). Radio and television advertising need only include the phrases "families with children are welcome" and "equal housing opportunity."

C. Within ninety (90) days after the execution of this agreement, Glacier Village will prepare, publish and pay for at least a one-eighth page advertisement in *The Daily Interlake* and a two by four column inch advertisement in the *Great Falls Tribune* which announces to the general public that the Glacier Village Greens Subdivision is no longer restricted to occupancy by persons over the age of 17 and that families with children are welcome. The advertisement will be run for four (4) consecutive Sundays in the real estate section of *The Daily Interlake* and one (1) Sunday in the real estate section of *The Great Falls Tribune*. The advertisement will contain the language specified in paragraph 5(B) of this agreement.

D. Glacier Village will spend at least five thousand

dollars (\$5,000) to construct a playground area for children in the Glacier Village homeowner's park. Construction of the playground will be completed on or before June 1, 1997. Glacier Village will submit to the Commission receipts and/or invoices documenting expenditures made under this paragraph within thirty (30) days after construction of the playground area is completed. It is agreed that the playground area will include the following:

- (i) At least one (1) swing set with a minimum of two (2) swings and a climbing rope;
- (ii) A children's playground set with slide and climbing apparatus;
- (iii) A 30 foot by 60 foot regulation volleyball/badminton area; and
- (iv) A 30 foot by 30 foot play area.

E. The Commission conducted a modified accessibility survey of Glacier Village on May 16, 1996. The May 21, 1996 report to the Commission concludes that "in general, the level of accessibility ... [for Glacier Village's] facilities is good." The accessibility survey also states that the public facilities at Glacier Village were constructed in compliance with applicable building codes and that such construction does not always comply with federal accessibility requirements. The report alleges that several items are out of compliance with the requirements of the Americans with Disabilities Act ("ADA"). Glacier Village will spend at least four thousand dollars (\$4,000.00) to address certain accessibility issues identified in the May 21, 1996 modified accessibility survey:

- (i) Parking spaces at the golf course and club house parking lot will be modified to comply with standards;
- (ii) The ramp at the Pro Shop will be brought into compliance;
- (iii) Restrooms at the deli/store will be modified as follows: the hot water pipes will be wrapped; the stall doors will be rehinged to swing outward; and appropriate signage will be installed; and
- (iv) A pathway or walkway from the street to the Homeowners Park and restroom will be constructed of compacted gravel so that the Park and restroom are accessible by wheelchair.

The renovations described in this paragraph will be completed on or before June 1, 1997.

F. Glacier Village agrees that all of its officers, directors, employees and agents involved in the sale of property in the Glacier Village Greens Subdivision shall sign the attached "Nondiscrimination Agreement" and that the original of each Nondiscrimination Agreement shall be retained in the files of Glacier Village. Glacier Village agrees that a violation of the terms and conditions of the attached Nondiscrimination Agreement

Village shall make the required donation within ninety (90) days after the Commission receives the requisite number of "housing for older persons" certifications from the members of the Homeowners Association.

6. The Commission agrees that the affirmative acts described in paragraphs 5(A) through (G) constitute adequate remedial measures for the violations alleged in paragraph 1 of this agreement. The Commission will dismiss, with prejudice, the District Court action referenced in paragraph 1 of this agreement by filing a notice of dismissal pursuant to Rule 41(a)(1), M. R. Civ. P. The Commission agrees that it will not initiate any other civil or criminal action against Glacier Village or any of its individual officers, directors, agents, employees or shareholders who are subject to the terms of this agreement for any violations which may have occurred up to and including the date of the execution of this agreement by all parties. This agreement does not:

A. Preclude the Commission or its staff from investigating and acting on complaints filed after the effective date of this agreement by persons who claim to be aggrieved by any discriminatory practice. The Commission and its staff state that they have no notice of and are not aware of any alleged violations concerning Glacier Village involving conduct or actions occurring after September 30, 1995, except the advertisement published in the PTI telephone directory in April, 1996. The Commission hereby acknowledges that Glacier Village has supplied documentation showing that Glacier Village directed that the offensive language in the PTI advertisement be deleted but that PTI published the ad with the offensive language contrary to the directive from Glacier Village.

B. Prevent the Commission or its staff from seeking the remedies allowed by law if it is determined that there is substantial credible evidence to support a claim of discrimination filed after the effective date of this agreement by a person who is not a party to this agreement.

C. Affect claims brought by third parties in any other forum. However, the Commission and its staff agree that this agreement may be introduced into evidence in any third party proceeding as evidence of Glacier Village's good faith settlement of the alleged violations described in paragraph 1 of this agreement.

7. This agreement is binding on the assigns, heirs, agents, employees, staff and successors-in-interest of the parties.

8. This agreement does not constitute an admission that Glacier Village has violated the Montana Human Rights Act or any other state or federal law except as expressly admitted in this agreement. This agreement has been entered into as a compromise in order to resolve the dispute without further proceedings and

without further expenditure of funds and commitment of resources to litigation. The parties hereby acknowledge that the objective of this agreement is to devote available energy and resources to the achievement of fair housing goals in the Glacier Village Greens Subdivision.

9. The parties hereby acknowledge that they have had an opportunity to consult with legal counsel about the terms and conditions of this agreement and that they fully understand the contents of this agreement.

10. Each party shall be responsible for their own costs and attorney fees incurred in this administrative matter and in the District Court action referenced in paragraph 1 of this agreement.

11. Any party to this agreement may bring an action in Flathead County District Court to enforce the terms and conditions of this agreement. The prevailing party in any action to compel compliance with the terms of this agreement shall be entitled to recover reasonable attorney fees and costs.

12. This agreement constitutes the entire agreement between the parties and no amendment, modification or supplement is valid without the express written consent of all parties.

13. This agreement does not apply to Rod Bitney, dba Village Greens Properties.

14. The effective date of this agreement is the date on which all signatories have signed and dated this agreement.

MONTANA HUMAN RIGHTS COMMISSION

By: *S. Jane Lopp*
Chair

10/8/96
Date

Anne L. MacIntyre
Anne L. MacIntyre
Administrator
Montana Human Rights Commission
PO Box 1728
Helena, MT 59624-1728

10/8/96
Date

GLACIER VILLAGE GREENS, INC.

By: *George C. Selby*
President

9-24-96
Date

G. STEVEN BROWN

G. Steven Brown

1313 Eleventh Avenue

Helena, MT 59601

Attorney for Glacier Village Greens, Inc.

9/30/96

Date

NONDISCRIMINATION AGREEMENT

I, _____, am a director/officer/employee/agent of Glacier Village Greens, Inc. I hereby agree that if I am involved in the sale of any Glacier Village Greens Subdivision property owned by Glacier Village Greens, Inc.:

1. I will not discriminate on the basis of familial status, sex, marital status, age, race, color, national origin, mental or physical handicap, religion or creed.

2. I understand and agree that families are welcome to own property in the Glacier Village Greens Subdivision.

3. I understand and agree that if I violate the terms and conditions of this Nondiscrimination Agreement, I will be subject to dismissal and/or disciplinary action by Glacier Village Greens, Inc.

4. Nothing in this Nondiscrimination Agreement shall be construed as a waiver of my right to contest any allegation that I have violated this agreement or any provision of law.

DATED this _____ day of _____, 199__.

Agreed To	Status	Follow up	Value
g. Will report to the Commission staff every six months through January 1, 2000 beginning on January 1, 1997 and include the following: 1. - A list of each property in Glacier Village Greens and sold by GVG or its agents including name of buyer, family composition, and phone number, 2. - a copy of each print advertisement excluding MLS listings, for any property in the GVG owned by GVG and 3. - a copy of the log of inquiries about property in GVG owned by GVG including the family composition of the person making each inquiry if known	Pending	Monitor reports of January first and July first each year to the year 2000	

**BEFORE THE HUMAN RIGHTS COMMISSION
for the State of Montana**

Anne L. MacIntyre, Administrator, Montana Human Rights Commission staff,	)	HRC Case #9602007653
)	
Complainant,	)	HUD Case #08-96-0281-8
)	
vs.	)	Settlement and Conciliation
	)	Agreement
Century 21 Home and Investment Center, Inc., and Larry O. Lee,)	
)	
Respondents.)	

SETTLEMENT AGREEMENT

This agreement is made by and between the complainant, Anne L. MacIntyre, Administrator of staff of the Montana Human Rights Commission (the "Commission"), and the respondents, Century 21 Home and Investment Center, Inc. ("Century 21 HIC") and Larry O. Lee. The Commission and the parties hereby stipulate and agree as follows:

1. This agreement resolves all allegations that Century 21 HIC and Larry Lee violated provisions of the Human Rights Act and the Fair Housing Act as described in the above captioned complaint.
2. Respondents acknowledge that the firm through two of its previous sales associates did in the multiple listing service data compilation improperly disclose restrictive covenants in the remarks section in 1994 and 1995 as set forth in the final investigative report in the above case which limited the housing choices of families with children and violated §49-2-305, MCA.
3. Respondents will not discriminate in the future against any person in violation of the fair housing provisions of the Montana Human Rights Act or the federal Fair Housing Act.
4. Respondents jointly agree to the principles of fair housing marketing and agree to make good faith efforts to utilize the strategies to implement those principles as set forth in the attached Exhibit A which is a restatement and adaptation for purposes of this agreement of the "realtor members responsibilities" set forth in the voluntary affirmative marketing agreement which respondents previously promised and agreed to perform. Century 21 HIC will report in writing to the Commission describing how the firm acted to follow each of the fair housing marketing principles and each of the fair housing marketing strategies set forth in Exhibit A in 1997 and 1998 and the firm agrees to file the corresponding written reports with the Commission to be delivered to the Commission on or before February 1, 1998 and February 1, 1999.
5. No later than May 31, 1997, respondents will pay the following sums: (a) a \$1,500 donation shall be made by respondents to the Habitat for Humanity organization operating in the Flathead

Valley housing market or to another nonprofit tax-exempt developer of housing for families with children operating in that housing market with written proof of the donation delivered to the Commission within 5 days thereafter, and (b) a \$1,000 payment will be delivered to the offices of the Commission as and for reimbursement of the deposition costs in the investigation of this case with payment to be by certified check made payable to the State of Montana.

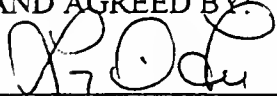
6. In consideration of the affirmative relief to be performed by the respondents as described in Paragraph Nos. 3 and 4 above, and in consideration of the monetary payments made by respondents as described in Paragraph No. 5 above, the Commission (a) agrees to cease processing this case, (b) agrees not to file a district court complaint in connection with case and pursuant to §49-2-510(4), MCA, (c) agrees to notify HUD that this case has been resolved by settlement and conciliation agreement, and (d) agrees to recommend that the state Board of Realty Regulation take no adverse action against respondent Larry Lee as a result of the activities which were the subject of this complaint so long as respondents do not materially breach this settlement and conciliation agreement.

7. The Commission agrees that the remedial acts described in Paragraph Nos. 3, 4 and 5 above, upon completion, constitute adequate compensatory and affirmative relief for the violations of the Human Rights Act or the federal Fair Housing Act which are the subject of this complaint.

8. The parties acknowledge that they have had an opportunity to consult with legal counsel about the terms and conditions of this agreement and have either done so or have waived their right to that opportunity and that they fully understand the contents of this agreement. This agreement is binding on the assigns, heirs, agents, employees, staff and successors in interests of the parties. Any party to this agreement may bring an action in any judicial district where either party has its principal business offices to enforce the terms and conditions of this agreement and the prevailing party shall be entitled to costs and attorney fees in the event of such action. This agreement is admissible as evidence in any legal proceeding if relevant to that proceeding.

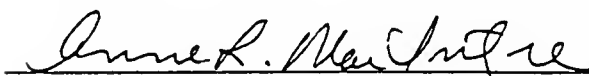
9. This agreement constitutes the entire agreement between the parties and no amendment, modification or supplement is valid without express written consent of both parties. The effective date of this agreement is the date on which all signatories have signed and dated this agreement.

SIGNED AND AGREED BY:



Larry O. Lee, on his own behalf and for Century 21 Home and Investment Center, Inc.

Date: 2/12/97



Anne L. MacIntyre, Administrator, Montana Human Rights Commission

Date: 2/11/97

B. Public Commitment to Fair Housing -

1. To display in a prominent place the fair housing poster developed jointly by HUD and NAR which includes the NAR Code for Equal Opportunity;
2. To use advertising and listing policies for the sale or rental of housing that indicates to the general public that the advertised housing is open to all buyers and renters without regard to race, color, religion, sex, familial status, marital status, age, disability or national origin;
3. To include in such advertising an official Equal Housing Opportunity slogan or logotype approved by HUD;
4. To encourage all associates to distribute copies of HUD produced or NAR produced flyers on the topic of fair housing rights and responsibilities to all clients at the time the listing contract is signed.


C. Fair Housing Procedures and Advertising Policies -

1. To adopt fair housing procedures (including procedures relating to office operations) and advertising and listing policies to implement the goals of the fair housing laws - to provide fair housing for all;
2. To either adopt the fair housing procedures adopted or developed by the National Association of Realtors or develop fair housing procedures and advertising and listing policies which, at a minimum are consistent with those of the NAR;
3. To require all associates to follow the fair housing procedures and policies adopted by the firm;
4. To ensure that the firm's fair housing procedures, including those relating to office operations, address the provision of equal professional service without unlawful discrimination;
5. To incorporate the provisions of Paragraph II.B. (Public Commitment to Fair Housing) above into the firm's advertising and listing policies.

D. Equal Opportunity in the Real Estate Industry - To affirmatively recruit persons of all racial and ethnic groups, of both sexes, with and without disabilities, and individuals otherwise protected by the fair housing laws, as salaried employees and independent contractors through the use of Equal Employment Opportunity slogan in all advertisements for employee and independent contractors.

E. Association and Community Efforts -

1. To encourage all associates to participate in Montana Association of Realtors equal opportunity activities;
2. To attempt to participate in MAR or NAR activities designed to develop a partnership with the community in efforts to identify and remove barriers to equal opportunity in housing.

Initialed:  Larry Lee, individually and for Century 21 HLC

BEFORE THE HUMAN RIGHTS COMMISSION
of the State of Montana

Human Rights Commission Staff,	)	#9702007809
)	
Complainant,)	
versus	)	Settlement and Conciliation Agreement
)	
Lee and Judy Reynolds dba Mobile City)	
Home Park,)	
Respondents.)	
Human Rights Commission Staff,	)	#9702007823
)	
Complainant,)	
versus	)	Settlement and Conciliation Agreement
)	
Laura Chevalllis,)	
)	
Respondent.)	
Sharon Amdahl,	)	#9702007850
)	
Charging Party,)	
versus	)	Settlement and Conciliation Agreement
)	
Lee and Judy Reynolds dba Mobile City)	
Home Park,)	
Respondents.)	

SETTLEMENT AND CONCILIATION AGREEMENT

This agreement is made by and between the staff of the Montana Human Rights Commission ("Complainant"), Sharon Amdahl and her family ("Charging Party") and Lee and Judy Reynolds (Respondents) and Laura Chevalllis (Respondent Chevalllis). The complainant, charging party and respondents and respondent Chevalllis hereby stipulate and agree as follows:

1. This agreement is intended to resolve allegations, through the date of this agreement, as set forth by the charging party and complainant in the above entitled cases that respondents violated the fair housing provisions of the Human Rights Act and the federal Fair Housing Act.

2. The parties agree and acknowledge that the objective of this agreement is to prevent future discrimination at the Mobile City Home Park (hereafter also the “mobile home park”) and to rectify harm to persons whose rights under §49-2-305, MCA, and 42 USC §3604 may have been violated by the past segregation practices based on age and family status at the mobile home park.

3. This settlement agreement is intended to fully and completely resolve any and all claims by charging party and complainant through the date of this agreement that the respondents discriminated against persons because of age or familial status in violation of state or federal fair housing laws.

4. The parties agree that upon review and approval of this settlement agreement by the Human Rights Commission at its next meeting before June 15, 1997, whether held in person or by telephone or by other means, the Commission will enter a final order by consent of the parties in the above captioned cases incorporating this agreement and shall cease any further processing of Complaints #9702007809, #9702007810, 9702007850, and

shall advise the U.S. Department of Housing and Urban Development that all corresponding HUD administrative complaints have been closed in accordance with the terms of this settlement and conciliation agreement.

5. Notice of consideration of this settlement agreement shall be given in the same manner as any other business coming before the Commission and shall include a statement advising that any interested person seeking to obtain a copy of this proposed settlement agreement may obtain a copy from the offices of the Commission and that any interested person seeking to object to approval of this settlement agreement must file a written statement to that effect not less than three (3) days before the meeting is scheduled and stating the basis upon which the objection is made. An interested party may appear before the Commission at the time of the consideration of this agreement provided that notice of such an appearance is given at least three (3) days prior to the scheduled meeting.

6. Respondents Lee and Judy Reynolds acknowledge that housing opportunities at Mobile City Home Park were segregated in part on the basis of age or familial status during the period through September 30, 1996. Respondents agree to the entry of a consent order by the Commission enjoining any further segregation at the Mobile City Home Park in violation of state or federal fair housing laws or any other violation by any of the respondents of the fair housing provisions of the Human Rights Act or the federal Fair Housing Act.

7. Respondents agree to perform the following affirmative acts to minimize the likelihood of any future violation of state or federal fair housing laws:

a. Respondent agrees to publish in the classified housing section of three Sunday editions of the Helena Independent Record (in July 1997, September 1997, and November 1997) and in the real estate section of three editions of the ADIT (in August 1997, October 1997, and December 1997) a 1/8 page notice that housing at Mobile City Home Park is available on an equal opportunity basis and stating that "Families are Welcome" there. The text of the notice shall be prepared jointly and in good faith by the complainant and respondents.

b. Within 30 days after the date of this agreement, respondents agree to adopt a policy that all advertising performed by respondents, including all classified housing ads and signage and other marketing materials, will include the statement "Families are Welcome" at Mobile City Home Park and the legend "EHO" indicating that housing opportunities are available on an equal opportunity basis at the mobile home park. In addition, respondents will inform in writing all residents that all advertising of any housing opportunity at Mobile City Home Park should include the phrase "Families are Welcome" and the legend "EHO" indicating that housing opportunities are available on an equal opportunity basis at the mobile home park. This obligation to include specific phrases in all advertising, signage and other marketing materials will continue until September 30, 1998. Signage for the mobile home park, including the billboard visible at Highway 12

in Helena, Montana, and any other billboards located on or in close proximity to the mobile home park will be replaced within 180 days of this agreement.

c. Within 180 days after the date of this agreement, respondents agree to distribute to all their employees and agents and to all residents of Mobile City Home Park educational materials on fair housing rights and responsibilities prepared jointly and in good faith by the complainant and the respondents. The materials shall emphasize that families with children are guaranteed equal housing opportunities and services under state and federal law.

d. Respondents will be responsible for the costs of preparing, printing, producing, erecting, and distributing the information described in the preceding 3 subparagraphs. The parties agree that the fair market value of furnishing those services and materials is expected to exceed the sum of One Thousand Dollars (\$1,000). Respondents shall report to the Commission regarding the performance and completion of those activities on or before September 30, 1998.

8. Respondent further agrees to take the following remedial acts to rectify any harm done to the charging party and to reimburse the costs incurred or to be incurred by the complainant as a result of the discriminatory practices as described in Paragraph #6:

a. Within 20 days of the date of this agreement, respondents Reynolds agree to pay to Sharon Amdahl the sum of Three Thousand Dollars (\$3,000) for her individual benefit and for the benefit of all members of the Amdahl family. In consideration of that

payment, Sharon Amdahl shall execute a full and complete discharge and release of the respondents from any and all claims for damages, costs, expenses, losses, or other sums made on her own behalf and on behalf of each and every member of her family. Respondents shall deliver the payment to the Human Rights Commission staff for forwarding to the charging party upon receipt of her executed discharge and release.

b. Within 20 days of the date of this agreement, respondents Reynolds agree to pay to and deliver to the State of Montana/Human Rights Commission the sum of Two Thousand Dollars (\$2,000) in satisfaction of any and all claims for costs, expenses, fees, losses or other sums incurred or to be incurred by the Commission or other agency of the state of Montana in the filing, investigation, processing, implementation, monitoring of or other activity related to the above referenced complaints and this conciliation and settlement agreement. In consideration of receipt of that payment, the Commission hereby agrees to seek no additional sums from respondents arising from or relating to any of the above referenced complaints against respondents.

9. As a showing of good faith, the respondent Reynolds agree to place the sum of Eight Thousand Dollars (\$8,000) in an interest bearing account in a financial institution agreeable to complainant and respondent as a Compensation Trust Fund. The purpose of the Compensation Trust Fund is to provide security for the payment of all other claims of injury or harm to any other persons which are *filed before September 30, 1998, and are*

proved to be a result of the violations of state or federal fair housing laws as described in Paragraph #6 above.

a. The processing, evaluation, investigation, hearing and/or trial of such claims by other persons alleging to be aggrieved by the segregation practices at the mobile home park shall be done in accordance with the law in effect at the time any such claim is filed.

b. The administrator of the Compensation Trust Fund shall be agreeable to the parties and may be an officer of the financial institution agreeable to the parties.

c. The administrator of the Compensation Trust Fund shall disburse funds from the Fund only after final disposition of a claim filed against respondents alleging a violation of state or federal fair housing laws brought after the date of this settlement and conciliation agreement and upon order of a court of competent jurisdiction or order of the Montana Human Rights Commission or its successor or by written directive of the respondents Reynolds to disburse monies from the Fund in satisfaction of said claim.

(i) The administrator shall disburse sums from the Fund to other persons only in accordance with such order or directive.

(ii) If the amount ordered or directed to be disbursed exceeds the sum then remaining in the Compensation Trust Fund, the administrator shall disburse the remaining sums in the Fund in accordance with the order or directive and shall inform the respondent Reynolds and the applicable court and the Human Rights Commission (or applicable

administrative agency) and all other interested persons identifiable from the face of the order or directive of the amount disbursed and the amount of any deficiency.

(iii) Upon exhaustion of the funds in the Fund, the Fund shall be closed and the administrator shall have no further obligations or duties to any persons.

(iv.) The respondents Reynolds, their employees or other agents, shall remain responsible for compliance with any order of a court or order of the Commission until full and complete satisfaction of any such order.

d. If no claims have been made or are pending on or before September 30, 1998, against the respondents Reynolds or their employees or other agents alleging a violation of state or federal fair housing law as described in Paragraph #6 above, then the administrator shall dissolve the Compensation Trust Fund and shall release the funds plus accrued interest (less reasonable administrative costs) to the respondent Reynolds upon their written request and with the written acknowledgement by the Human Rights Commission or its successor that no such claims have been made or are pending.

e. If any claim is pending on September 30, 1998 that was made against respondents Reynolds and alleged a violation of state or federal fair housing law as a result of the violations described in Paragraph #6 above, then the Compensation Trust Fund shall not be dissolved until final disposition of any such pending claim.

10. The parties acknowledge that they have had an opportunity to consult with legal counsel about the terms and conditions of this agreement and that they fully understand the contents of this agreement.

11. This agreement is binding on the assigns, heirs, agents, employees, staff and successors in interests of the parties.

12. This agreement may be admitted in any legal proceeding concerning a breach of this agreement and in any legal proceeding which concerns or relates to any alleged violation of state or federal fair housing laws by respondents alleged to have occurred at Mobile City Home Park at any time prior to the date of this agreement for any purpose relevant to such a proceeding.

13. The Commission hereby orders dismissal with prejudice of the administrative complaint against the respondent Laura Chevallis (Case #9702007823). Respondent Chevallis shall have no obligation to perform any affirmative or remedial relief provided under this agreement except to comply with the order of the Human Rights Commission enjoining all respondents from violating state or federal fair housing laws in the future.

14. The parties understand and agree that this Settlement Agreement cannot and does not preclude or otherwise impair the complainant or the Commission from the performance of any statutory duty or other legal obligation which the complainant or the Commission is required by law to perform, including but not limited to the processing in the ordinary course of any complaint of discrimination filed with the Commission by an

aggrieved person, or any person lawfully acting on behalf of an aggrieved person, and concerning any act or omission or practice of the respondents, which is alleged to be in violation of the Human Rights Act or the federal Fair Housing Act. The performance of such duty or obligation by the complainant or the Commission does not preclude any persons, including respondents Reynolds, from presenting this Settlement and Conciliation in any proceeding alleging a violation of state or federal fair housing law filed after the date of this agreement. The parties further understand and agree that, upon execution of this agreement, (i) the Commission will not disseminate information regarding the above referenced complaints solely for the purpose of causing a complaint or complaints to be filed by any other person against any of the respondents as a result of the violations described in Paragraph #6 above, (ii) the Commission will not refuse to disseminate information regarding the above referenced complaints for the purpose of preventing or delaying or interfering with the filing of a timely complaint by any other person against any of the respondents as a result of the violations described in Paragraph #6 above, and (iii) the Commission will disseminate information regarding the above referenced complaints upon lawful request by any person or otherwise in accordance with its statutory duties.

15. Either party to this agreement may bring an action in Lewis and Clark County District Court to enforce the terms and conditions of this agreement and the prevailing party shall be entitled to costs and attorney fees in the event of such action.

16. This agreement is the entire agreement between the parties and no amendment, modification or supplement is valid without express written consent of all parties.

17. The date of this agreement is the date on which all signatories have signed and dated this agreement.

SIGNATURES

Each of the undersigned acknowledges that he/she has read the foregoing settlement and conciliation agreement, consisting of ten (10) pages, and agrees to abide by its terms and conditions.

Sharon Amdahl
Charging Party, Sharon Amdahl
Date: 6-11-97

Lee Reynolds
Respondent, Lee Reynolds
Date: 6/9/97

Anne L. MacIntyre
Anne L. MacIntyre, Administrator
Montana Human Rights Commission
Date: 6-12-97

Judy Reynolds
Respondent, Judy Reynolds
Date: 6/9/97

Laura Chevallis
Laura Chevallis
Date: 6/9/97

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

Human Rights Commission Staff,)	
)	
Complainant,	)	Case # 9702008246
)	
versus)	
)	
	)	CONSENT ORDER
	)	BY AGREEMENT OF THE PARTIES
Lee Enterprises, Inc.,)	
)	
Respondent.)	
)	

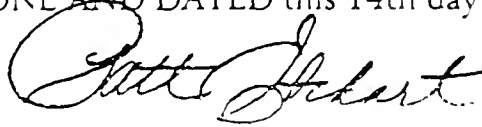
CONSENT ORDER

This matter coming before the members of the Montana Human Rights Commission on the joint motion of the parties for entry of a consent order adopting the attached Comprehensive Settlement Agreement and notice having been given to interested parties in accordance with the terms of that agreement and the Commission being otherwise advised,

IT IS HEREBY ORDERED, by majority vote of the members of the Commission, that the terms and conditions of the Comprehensive Settlement Agreement, attached hereto and incorporated herein by reference, are approved and adopted. It is further ordered that the above entitled case be and hereby is fully resolved and closed pursuant to the terms of the Comprehensive Settlement Agreement. The Human Rights Commission staff is directed to advise the U.S. Department of Housing and Urban

Development of the closure of the above entitled action in accordance with any cooperative agreement which may be applicable.

DONE AND DATED this 14th day of July, 1997.

A handwritten signature in cursive script, appearing to read "Patt Etchart".

Gloria "Patt" Etchart, Chair
Montana Human Rights Commission

COMPREHENSIVE SETTLEMENT AGREEMENT

COMPREHENSIVE SETTLEMENT AGREEMENT made and entered into this 30th day of JUNE, 1997, by and between THE MONTANA HUMAN RIGHTS COMMISSION STAFF, for and on behalf of persons whose equal housing rights were or may have been violated by the publication of certain classified housing advertisements in newspapers published by Respondent prior to the effective date hereof, hereinafter referred to as "Staff", and LEE ENTERPRISES, INC., a corporation, hereinafter referred to as "Respondent."

W I T N E S S E T H:

WHEREAS, Respondent operates several daily and weekly newspapers, (including shoppers), in the State of Montana, namely the *Billings Gazette* (Billings), the *Montana Standard* (Butte), the *Independent Record* (Helena), the *Missoulian* (Missoula), the *Adit* (Helena), the *Mini Nickel* (Bozeman), the *Thrifty Nickel* (Billings), the *Western Montana Messenger* (Missoula), the *Consumers Press* (Great Falls), the *Life and Times Press* (Hamilton), the *Nickel Saver* (Butte), the *Trader* (Dillon), the *Western Shopper* (Deer Lodge), and the *Yellowstone Shopper* (Billings), all of which regularly contain classified housing advertisements; and

WHEREAS, Staff is responsible for the enforcement of the fair housing provisions of the Montana Human Rights Code (Mont. Code Ann. § 49-2-305(3), and the Federal Fair Housing Act (42 U.S.C. § 3604(c)), both of which proscribe as an unlawful discriminatory practice, the making, printing, or publishing of

any notice, statement, or advertisement that indicates any preference, limitation, or discrimination, or any intention to make or have a preference, limitation, or discrimination based on gender, age, marital status, or familial status in the provision of housing; and

WHEREAS, Staff has conducted an investigation of the contents of classified housing advertisements made, printed or published in newspapers published by Respondent in Montana prior to the effective date hereof; and

WHEREAS, as a result of said investigation, the Respondent has determined that certain classified housing advertisements published in certain newspapers published by Respondent, namely, the *Missoulian* and the *Adit*, prior to the effective date hereof, contain certain words and/or phrases which express a preference, limitation, or discrimination in the provision of housing based on gender, age, marital status, or familial status; and

WHEREAS, Staff has determined that good cause exists for the filing of a Complaint against Respondent alleging that Respondent has violated Mont. Code Ann. § 49-2-305(3), and 42 U.S.C. § 3604(c), by making, printing, or publishing classified housing advertisements in the *Missoulian* and *Adit* which indicate a proscribed preference, limitation, or discrimination, or an intention to make or have a proscribed preference, limitation, or discrimination based on age, gender, marital status, or familial status in the provision of housing, and has filed such a Complaint against Respondent; and

WHEREAS, Staff and Respondent agree and acknowledge that their mutual goal is the accomplishment, furtherance and promotion of fair, equal, and non-discriminatory housing in the State of Montana and that rather than expending their respective time, efforts and resources on litigation, their respective time, efforts and resources will be more effectively and efficiently expended by presently resolving all matters extant in the aforesaid Complaint, by establishing a protocol for the resolution and avoidance of future complaints, and by devoting their mutual time, resources, and efforts to increasing the public's awareness and knowledge of the rights and responsibilities of housing consumers and providers; and

WHEREAS, Staff and Respondent intend, by this Comprehensive Settlement Agreement to resolve any and all allegations, claims, and charges that Respondent may have violated the referenced provisions of the Montana Human Rights Code and the Federal Fair Housing Act prior to the effective date hereof; and

WHEREAS, Staff and Respondent intend, by this Comprehensive Settlement Agreement, to establish a procedural framework by which persons who may have been aggrieved or harmed by the publication of classified housing advertisements in violation of the Montana Human Rights Code and the Federal Fair Housing Act will be notified of this Comprehensive Settlement Agreement and will have their claims speedily and efficiently processed and resolved; and

WHEREAS, Staff and Respondent intend, by this Comprehensive Settlement Agreement to establish guidelines to assist Respondent in complying with the fair housing advertising provisions of the Montana Human Rights Code and the Federal Fair Housing Act while at the same time assisting Staff in monitoring Respondent's compliance with said laws.

NOW, THEREFORE, in consideration of the stated premises and of the mutual covenants and promises contained herein, Staff and Respondent agree as follows:

1. This Comprehensive Settlement Agreement shall, upon approval by the Montana Human Rights Commission, completely, fully and finally resolve any and all charges, claims or allegations that Respondent made, printed, or published in any of its daily or weekly newspapers in Montana any classified housing advertisement or advertisements in violation of the fair housing advertising provisions of the Montana Human Rights Code (Mont. Code Ann. § 49-2-305(3)) or the Federal Fair Housing Act (42 U.S.C. § 3604(c)), prior to the effective date hereof.

2. This Comprehensive Settlement Agreement shall, upon approval by the Montana Human Rights Commission, supersede that certain Conciliation Agreement dated November 29, 1994, by and between Lee Enterprises, Inc., d/b/a Consumers Press and Yellowstone Shopper, Respondent, and various Charging Parties in consolidated Human Rights Commission Case Nos. 9302065761, 9302005860, and 9402006204 and consolidated HUD Case Nos. 08-93-

0195-1, 08-93-0256-1, and 08-94-0067-8, and the said Conciliation Agreement shall be of no further force or effect.

3. For purposes of this Comprehensive Settlement Agreement, Respondent acknowledges that the publication of certain classified housing advertisements prior to the effective date hereof which contain any of the words and/or phrases identified in Exhibit "A" hereof presents a *prima facie* case of violation of the referenced fair housing advertising provisions of the Montana Human Rights Code and the Federal Fair Housing Act. This acknowledgment shall not be construed as an admission that any advertisement published after the effective date hereof, regardless of its content, and regardless of the inclusion of any of the words and/or phrases identified in Exhibit "A" hereof, constitutes a *prima facie* case of violation of either the fair housing advertising provisions of the Montana Human Rights Code or the Federal Fair Housing Act.

4. Staff acknowledges that as of the date of this Comprehensive Settlement Agreement and subsequent to November 29, 1994, the date of the Conciliation Agreement referenced in paragraph 2 above, no person has filed a Complaint with the Human Rights Commission against Respondent or any of its publications, including the *Missoulian*, the *Adit*, the *Thrifty Nickel* and the *Western Montana Messenger*, alleging a violation by Respondent or any of its newspapers of the fair housing advertising provisions of the Montana Human Rights Code or the Federal Fair Housing Act. Staff acknowledges that no evidence was found in the

investigation of the classified housing advertisements published in Respondent's newspapers, including the *Missoulian*, the *Adit*, the *Thrifty Nickel* and the *Western Montana Messenger*, indicating that Respondent or any of its newspapers intended to violate the state or federal fair housing advertising laws for the purpose of denying the housing opportunities of any individual or to limit the housing choices of families with children or other persons because of their gender, age, marital status, or familial status.

5. To notify persons who may have been aggrieved or harmed by the making, printing, or publication of any classified housing advertisement or advertisements in violation of the fair housing advertising provisions of the Montana Human Rights Act or the Federal Fair Housing Act, Respondent agrees to publish a Notice of Comprehensive Settlement, at its own cost and expense, in the Sunday editions of the *Missoulian* and in the weekly editions of the *Adit*, the *Western Montana Messenger* and the *Thrifty Nickel* once a week for six consecutive weeks commencing within a reasonable time from the effective date hereof. Such Notice of Comprehensive Settlement shall be published in the section of the *Missoulian* and the *Adit* ^{and the *Western Montana Messenger* and the *Thrifty Nickel*} where classified housing advertisements ^{are} normally and regularly printed and shall be in a form sufficient to give legal notice to interested persons of this Comprehensive Settlement Agreement. The Notice of Comprehensive Settlement is attached as Exhibit "B" hereto.

6. Upon receipt of a verified Complaint filed in compliance with the provisions of this Comprehensive Settlement

Agreement, Staff will review and investigate the same and will require the production of proof in substantiation of the allegations contained in the verified Complaint. If, upon such review and investigation, Staff determines that good cause exists for the filing of the verified Complaint, Staff will notify Respondent and will provide Respondent with a copy of the verified Complaint along with the name and address of the claimant and copies of all documentary proof presented and will inform the Respondent that it has found that good cause exists for the filing of the verified Complaint.

7. If Respondent does not contest a verified Complaint, the Claimant thereunder will be entitled to receive a one time payment in an amount not to exceed \$250 from the Settlement Fund as and for the final resolution of any and all claims for damages, costs, expenses, or any other monetary amounts incurred or claimed by the Claimant as a result of the making, printing, or publication of an advertisement or advertisements in violation of any state or federal fair housing law prior to the effective date hereof. As a condition of the payment specified herein, each Claimant must, prior to receiving such payment, sign a release and must discharge Respondent from any and all claims by the Claimant through the date of payment.

8. If Respondent contests a verified Complaint it must, within 30 days of receiving the notice provided in paragraph 6 hereof, inform Staff in writing of its reasons for contesting the Complaint. Failure to inform Staff that it contests a verified

Complaint as set forth herein shall constitute a waiver of Respondent's right to do so. Staff will forward Respondent's statement to the Claimant and will inform the Claimant that he or she may elect to: (a) dismiss the verified complaint with prejudice; (b) seek a determination of entitlement to payment through a contested hearing which will be scheduled within 90 days before a hearing examiner appointed by the Montana Human Rights Commission; or (c) file a civil action against Respondent in accordance with Mont. Code Ann. § 49-2-510(5).

9. (a) In satisfaction of any and all claims that Respondent violated state or federal fair housing advertising laws through the effective date hereof, Respondent agrees to deposit the initial sum of \$7,500 in an interest-bearing account with a reputable financial institution agreeable to Staff as a Settlement Fund for the purpose of payment of claims filed in accordance with the provisions of this Comprehensive Settlement Agreement which are found to be supported by substantial evidence and which are not contested by Respondent. The Administrator of the Settlement Fund shall be a member of the Human Rights Commission Staff appointed by the Administrator of the Human Rights Commission. Under this Comprehensive Settlement Agreement, each person who establishes a valid claim which is not contested will be entitled to payment of his or her actual damages from the Settlement Fund in an amount not to exceed \$250.

(b) In the event that the actual damages awarded by the Administrator in all cases exceeds the amount deposited by

Respondent plus accrued interest, Respondent will deposit an additional \$7,500 into the Settlement Fund for administration as provided herein. Respondent's total contribution to the Settlement Fund shall not exceed \$15,000.

(c) In the event that the actual damages awarded by the Administrator exceeds the total amount deposited by Respondent plus accrued interest, the amount of payment each Complainant will receive will be reduced by the Administrator on a pro rata basis.

(d) Any amounts found to be due and payable as a result of a claim that Respondent contested pursuant to paragraph 8 will not be paid from the Settlement Fund but will be the separate responsibility of the Respondent as will be any amounts awarded against Respondent in a civil action brought pursuant to Mont. Code Ann. § 49-2-510(5).

(e) In the event the total actual damages paid by the Fund Administrator is less than the amounts deposited by Respondent in the Settlement Fund plus accrued interest, any balance remaining in the Settlement Fund will be returned to Respondent.

10. In consideration of Respondent's promises contained herein, and upon approval of this Comprehensive Settlement Agreement by the Montana Human Rights Commission, the Staff agrees to release and discharge Respondent from any and all claims for damages, civil penalties, costs, attorney's fees or other monetary amounts in connection with or arising from the publication of any classified housing advertisement or

advertisements in any of its newspapers through the effective date hereof, and to execute such documents as may be necessary to effectuate the terms and provisions of the Comprehensive Settlement Agreement.

11. Neither Staff or its employees or agents will place or attempt to place or solicit the placement or attempted placement of an advertisement or advertisements in any of Respondent's newspapers for the purpose of or with the intent or aim of inducing or causing Respondent or any of its newspapers to make, print or publish an advertisement or advertisements in violation of the Montana Human Rights Code or the Federal Fair Housing Act. No action against Respondent or any of its newspapers for violation of the Montana Human Rights Code or the Federal Fair Housing Act may be brought or maintained on the basis of the making, printing or publication of an advertisement or advertisements in violation of the Montana Human Rights Code or the Federal Fair Housing Act, if the same were made, printed, or published as the result of a solicitation for publication for the purpose, intent, or aim of causing or inducing Respondent or any of its newspapers to make, print or publish an advertisement or advertisements in violation of the Montana Human Rights Code or the Federal Fair Housing Act.

12. Respondent agrees to perform the following affirmative acts to minimize the likelihood of any future violation of state or federal fair housing advertising laws in its publication of classified housing ads in its various newspapers:

(a) Respondent agrees to publish, in each newspaper it owns and operates in the State of Montana, at its own cost and expense, a series of six public service announcements, copies of which are attached hereto as Exhibits C-1 through C-6, concerning rights and responsibilities under state and federal fair housing laws. These public service announcements will be published serially, once a month for six consecutive months, in the section where each newspaper normally publishes its classified housing advertisements and in a space constituting approximately one-eighth of a page (or its equivalent in column inches). Publication of the public service announcements will commence with the public service announcement attached hereto as Exhibit C-1 which will be published within 30 days of the effective date hereof. The specific dates of publication will be in the discretion of each newspaper. Respondent will furnish a copy of the edition in which publication occurred to the Staff within five business days of the publication.

(b) Within 90 days after the effective date of this Comprehensive Settlement Agreement, Respondent agrees to develop and adopt a procedure to inform its staff and advertisers in writing that causing to be made, printed, or published classified housing advertisements which indicate an illegal discriminatory preference, limitation, or discrimination may render the newspaper, the advertiser, and/or the employee liable for a violation of state or federal fair housing law. Upon request, Respondent will furnish a copy of the procedure to Staff.

(c) Respondent agrees that each of its newspapers will conduct a review, once every three months for the three years following the effective date hereof, of its classified housing advertisements to determine whether any advertisement was published indicating an illegal and discriminatory preference or limitation in the preceding three-month period. In the event Respondent identifies any such discriminatory advertisement during a review and provides Staff with a copy of the advertisement within 30 days after the review and a written statement that the publication of the advertisement was inadvertent and unintentional and contrary to Respondent's policy, Staff agrees that it will not initiate any administrative complaint or other action in law or in equity against the newspaper or the Respondent which is based on the publication of the identified classified housing advertisement or advertisements. Any advertisement or advertisements identified by a newspaper hereunder shall not constitute an advertisement under the provisions of paragraph 14. For purposes hereof, a publication of a classified housing advertisement by a newspaper shall include the republication of the same advertisement in a subsequent edition of the same newspaper. Republication of the same advertisement in a subsequent edition of the same daily or weekly newspaper shall not constitute a separate publication.

(d) Respondent agrees that each of its newspapers will conduct training for its classified advertising staff on the topic of fair housing advertising laws at least once every year

for the three years following the effective date of this Comprehensive Settlement Agreement. If requested by Respondent, Staff will assist in the preparation and review of materials used in and distributed at each of those training sessions. The parties will exercise good faith and their best efforts to prepare suitable training materials in the six months following the approval of this Comprehensive Settlement Agreement. Staff further agrees to attend and make presentations at those training sessions at the request of Respondent consistent with the Staff's performance of its other duties and obligations. A request for attendance and presentation by the Staff will be made no less than 30 days prior to a scheduled training session. Subject to prior approval, Respondent agrees to reimburse Staff for the reasonable costs expended in attending and presenting materials at Respondent's training sessions.

13. Respondent agrees to utilize its best efforts not to publish classified housing advertisements in a manner which violates the Montana Human Rights Act or the Federal Fair Housing Act.

14. In consideration of the large volume of classified housing advertisements published by the Respondent in the State of Montana, the large number of subordinate staff involved in the making, printing, and publication of classified housing advertisements on behalf of Respondent, and in consideration of the performance of the terms and conditions of this Comprehensive Settlement Agreement, Staff agrees that it will not claim a

breach of this agreement nor will it initiate any administrative complaint or other action at law or in equity against Respondent or against any newspaper owned and operated by Respondent in the State of Montana for the violation of the fair housing advertising provisions of the Montana Human Rights Act or the Federal Fair Housing Act unless it is demonstrated that at least one-quarter of one percent (.0025) of the classified housing advertisements published by that newspaper in any consecutive three-month period are alleged to state an unlawful preference, limitation, or discrimination. For purposes hereof, the publication of a classified housing advertisement by a daily or weekly newspaper shall include the republication of the same advertisement in a subsequent edition of the same newspaper or shopper. Republication of the same advertisement in a subsequent edition of the same daily or weekly newspaper shall not constitute a separate publication hereunder.

15. Respondent will furnish the name, address and telephone number of any party placing an advertisement or advertisements alleged to be violative of the fair housing provisions of the Montana Human Rights Code or the Federal Fair Housing Act in any of its newspapers, insofar as the information is available, upon written request of the Staff to Respondent.

16. The effective date of this Comprehensive Settlement Agreement shall be June 30, 1997, subject to approval by the Montana Human Rights Commission at its next scheduled meeting.

17. Upon review and approval of this Comprehensive Settlement Agreement by the Human Rights Commission at its next regularly scheduled meeting, the Human Rights Commission will enter a final order in the matter commenced by the Complaint filed by Staff against Respondent and the same will incorporate this Comprehensive Settlement Agreement. Notice of consideration of this Comprehensive Settlement Agreement, shall, prior to the Human Rights Commission's next scheduled meeting, be given in the same manner as any other business coming before the Montana Human Rights Commission and shall include a statement that any interested person seeking to obtain a copy of this Comprehensive Settlement Agreement may obtain the same from the offices of the Montana Human Rights Commission and that any interested person seeking to object to approval of this Comprehensive Settlement Agreement must file a written statement to that effect not less than seven days prior to the meeting which must state the basis upon which the objection is made.

18. As of June 1997, there is a cooperative agreement between the Human Rights Commission and the United States Department of Housing and Urban Development (HUD) providing for payment of costs in the processing, investigation and administration of verified housing discrimination complaints filed with the Commission which allege a violation of state and federal fair housing laws. If, and only if, the Commission is not reimbursed by HUD in accordance with that cooperative agreement or any such successor agreement for the processing,

investigation, and administration of verified complaints filed pursuant to this Comprehensive Settlement Agreement, Respondent agrees to reimburse the State of Montana for the reasonable and necessary costs, expenses, and other expenditures incurred by the Commission or the Staff in the processing, investigation and administration of those verified complaints. Respondent's reimbursement obligation under this agreement shall in no event exceed the sum of \$5,000. Respondent's reimbursement obligation arises only after receipt of an itemized statement of actual costs, expenses and expenditures incurred by the Commission in the processing, investigation and administration of verified complaints filed pursuant to this agreement. Upon written request from Respondent, the State of Montana will furnish documentation to support any request for reimbursement from Respondent.

19. The parties acknowledge that they have had an opportunity to consult with legal counsel about the terms and conditions of this Comprehensive Settlement Agreement and that they fully understand the contents of this Comprehensive Settlement Agreement.

20. This Comprehensive Settlement Agreement is binding on the assigns, heirs, agents, employees, staff and successors in interest of the parties.

21. This Comprehensive Settlement Agreement may be admitted in any legal proceeding concerning a breach of this agreement and, unless there has been a material breach of this agreement by

the Respondent, it may also be admitted in any legal proceeding which concerns or relates to the making, printing or publication by Respondent of any classified housing advertisement alleged to be a violation of a state or federal fair housing law for the purpose of demonstrating that the Human Rights Commission has determined that Respondent has made good faith, reasonable efforts to rectify any harm, pecuniary or otherwise, caused by the making, printing or publishing of a classified housing ad on or before the date of this agreement.

22. The Human Rights Commission agrees that the remedial and affirmative acts taken or to be taken by Respondent as described in this agreement, upon completion, constitute adequate and complete compensatory and affirmative relief for any harm done by the Respondent in the publication of any discriminatory classified housing advertisements through the date of this agreement which are alleged to have been in violation of state or federal fair housing advertising laws.

23. The parties acknowledge and agree that this Comprehensive Settlement Agreement does not preclude or otherwise impair the Staff or the Montana Human Rights Commission from the performance of any statutory duty or other legal obligation which the Staff or the Commission is required to perform, including but not limited to the processing in the ordinary course of its activities any complaint of discrimination filed with the Commission by an aggrieved person, or any person lawfully acting on behalf of an aggrieved person, and concerning any act or

omission or practice of the Respondent or any of its divisions, employees, representatives, or agents which is alleged to be in violation of the Human Rights Act or the Federal Fair Housing Act. The performance of such duty or obligation by the Staff or the Commission does not preclude the Respondent from defending against any such claim on the basis that an aggrieved person claiming a violation of state or federal fair housing law was eligible to receive and would have received relief under this Comprehensive Settlement Agreement but failed, refused, and neglected to do so.

24. Either party to this agreement may bring an action in Lewis and Clark County District Court to enforce the terms and conditions of this agreement and the prevailing party shall be entitled to costs and attorney fees in the event of such action.

25. This agreement constitutes the entire agreement between the parties and no amendment, modification, or supplement is valid without express written consent of both parties.

LEE ENTERPRISES, INC.,
a corporation

BY G. Bruce Whittenberg
G. Bruce Whittenberg, publisher
Missoula Independent Record.

MONTANA HUMAN RIGHTS COMMISSION STAFF

BY Anne L. MacIntyre

- (b) The date or dates upon which the person was actually seeking housing;
- (c) That the person read and considered housing opportunities made, printed, or published in the classified housing advertisements in a newspaper included in the Comprehensive Settlement Agreement;
- (d) The date or dates the person read and considered advertisements for the aforementioned housing opportunities and the date or dates the same were published;
- (e) That during the period when the person was actually seeking housing opportunities, he or she read and considered one or more advertisements which indicated a preference, limitation, or discrimination based on gender, age, marital status, or familial status;
- (f) That the advertised preference, limitation, or discrimination dissuaded or otherwise discouraged the person from applying for or considering the housing opportunity or opportunities contained in the classified housing advertisement or advertisements; and
- (g) That the person was thereby damaged.

7. In order to be covered by this Comprehensive Settlement Agreement, a verified complaint must concern a classified housing advertisement published in the *Missoulian*, *Adit*, *Western Montana Messenger* or *Thrifty Nickel* on or after June 15, 1995, which is alleged to be in violation of the Montana Human Rights Act or Federal Fair Housing Act.

8. The publisher of the advertisement or advertisements will have the opportunity to contest the statements in the verified Complaint.

9. The failure to present a claim in accordance with the terms of the Notice of Comprehensive Settlement and the Comprehensive Settlement Agreement and within the time limits provided may terminate the right of any aggrieved person to recover for damages suffered as a result of the publication of any advertisement or advertisements in violation of state or federal fair housing advertising laws.

DATED this 30th day of June, 1997.

MONTANA HUMAN RIGHTS COMMISSION

BY Anne L. MacIntyre
Anne L. MacIntyre
Administrator

